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MONTANA'S HISTORIC AND CULTURAL RESOURCES

November 1978

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MONTANA LEGISLATIVE COUNCIL

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MONTANA'S HISTORIC AND CULTURAL RESOURCES

A REPORT TO THE FORTY-SIXTH LEGISLATURE

Subcommittee on Education

November 1978

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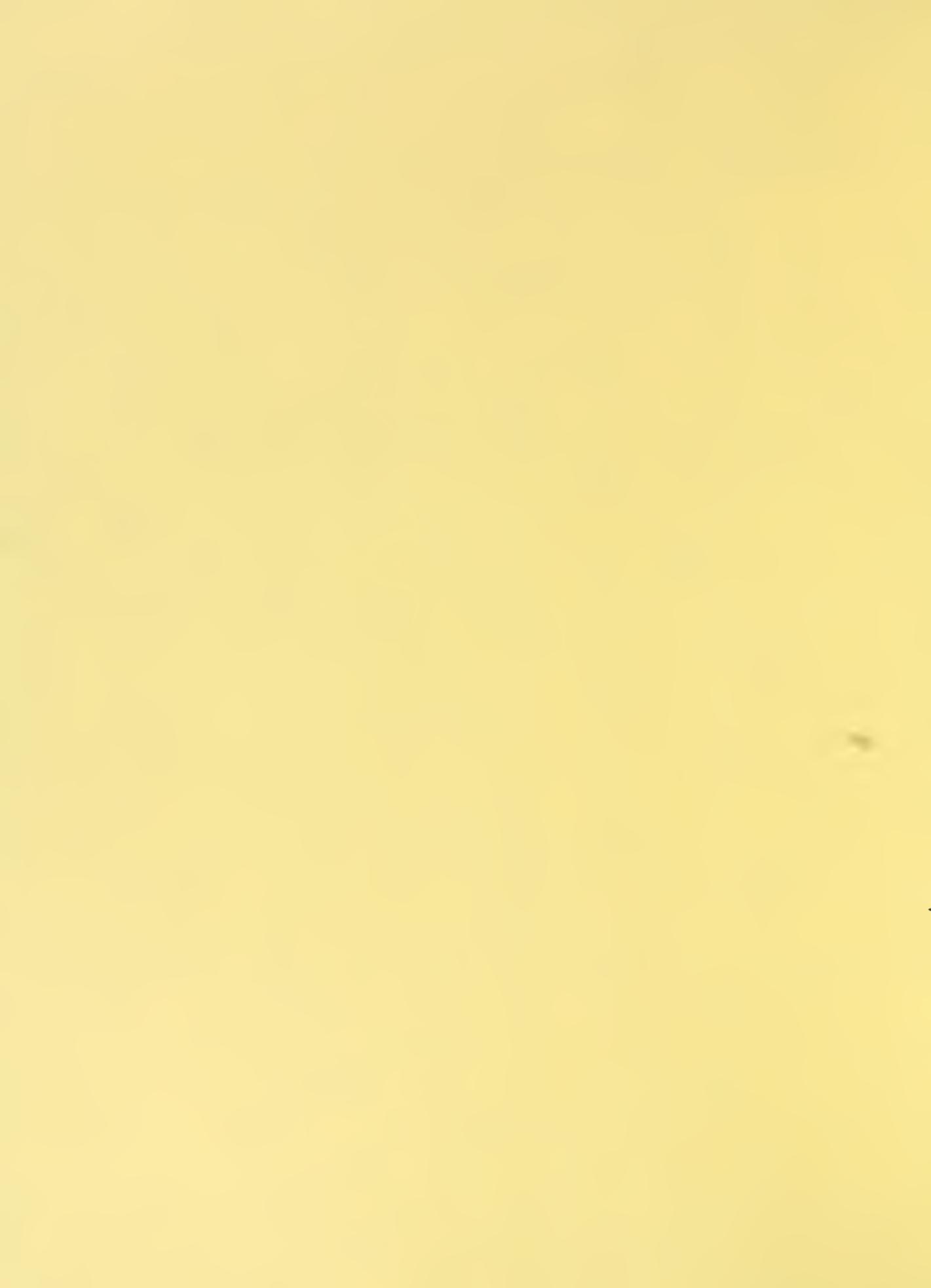
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SUMMARY OF RECOMMENDATIONS

The Interim Subcommittee on Education recommends that the Forty-sixth Montana Legislature:

- (1) Enact a bill authorizing original custodians to transfer official records to the state archives, providing for the confidentiality of transferred official records, and establishing the legal status of certified official records;
- (2) Enact a bill authorizing the Department of Administration to survey, allocate, and charge maintenance fees for state building space occupied by private entities;
- (3) Pass a resolution encouraging the House Appropriations Committee and the Senate Finance and Claims Committee to act favorably upon funding requests for historical and cultural projects and urging appropriations for historical and cultural projects to be made from the coal tax severance fund;
- (4) Appropriate \$1,475 for the restoration and protection of the 1884, 1889, and 1972 original Montana Constitutions;
- (5) Appropriate \$49,596 for a two year field acquisitions program to identify and collect valuable historic records and to demonstrate the need for more comprehensive programs in the future.



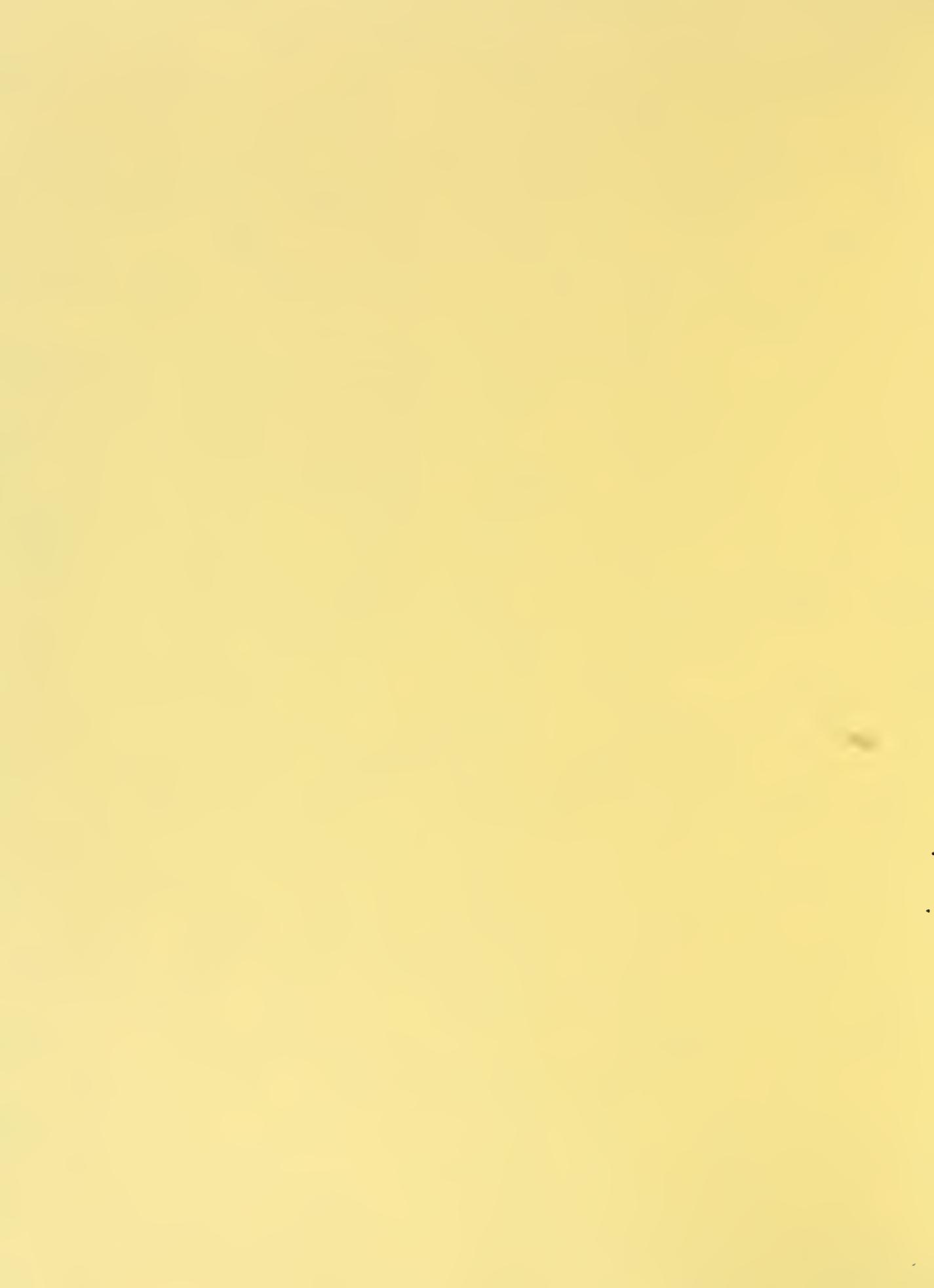
SUMMARY

House Joint Resolution 18, passed by the Forty-fifth Legislature, called for a study of the collection, preservation, and dissemination of Montana's historical and cultural resources. The Committee on Priorities assigned the study to the Interim Subcommittee on Education.

The Subcommittee met six times during the interim. Because of time and staff limitations and responsibility for two other major studies, the Subcommittee did not attempt an exhaustive inventory or analysis of all historical and cultural resource topics deserving attention. The Subcommittee's study was limited to the following areas:

- 1) the activities, requirements, and financial position of the Montana Historical Society;
- 2) the Historic Preservation Program;
- 3) the Antiquities Act;
- 4) the Archival Network System;
- 5) the legal status of the Veterans and Pioneers Memorial Building;
- 6) the transfer of records to the state archives; and
- 7) the restoration of Montana's Constitutions.

In addition the Subcommittee was given the responsibility of monitoring the progress of HJR 45, the study of Montana's cultural resources conducted by the Montana Arts Council.



HOUSE JOINT RESOLUTION NO. 18

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA REQUESTING THE CREATION OF A COMMITTEE TO STUDY THE COLLECTION, PRESERVATION, AND DISSEMINATION OF MONTANA'S HISTORICAL AND CULTURAL RECORD.

WHEREAS, the history of Montana, while short in duration, is rich in substance; and

WHEREAS, that history provides the citizen of Montana both a sense of time and a sense of place; and

WHEREAS, it is this historical continuum, this historical heritage, which most accurately defines the modern Montanan; and

WHEREAS, the history and culture of Montana will be lost to the current and future citizens of the state if it is not properly collected, preserved, and disseminated; and

WHEREAS, the Montana Historical Society, the oldest legislatively-created department in Montana and a major repository of the state's historical experience, is severely restricted in its efforts to collect, preserve, and disseminate Montana's historical heritage; and

WHEREAS, the manner in which state and local records of historical importance are collected and preserved is inadequate and a hardship to the preservation of Montana's historical and cultural experience; and

WHEREAS, the collection of records and artifacts of historical and cultural significance is scattered among several public agencies; and

WHEREAS, many of Montana's priceless heirlooms have been removed from the state to be prized and exhibited in other regions of the country; and

WHEREAS, the problem of the preservation of Montana's historic and archaeological sites has never been seriously addressed; and

WHEREAS, Montana's State Antiquities Act is an inadequate guideline for the identification and preservation of Montana's historical and cultural past; and

WHEREAS, many of Montana's museums are severely constrained in their capacity to preserve and display objects of Montana's cultural tradition; and

WHEREAS, all of Montana's citizens have a vital interest in the preservation of their past.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That the Committee on Priorities is hereby requested to give high priority to the appointment of a committee to study the collection, preservation, and dissemination of Montana's historical and cultural heritage.

BE IT FURTHER RESOLVED, that the committee investigate alternative methods of financing and coordinating a state archival system for the collection and maintenance of state and local records.

BE IT FURTHER RESOLVED, that the committee study the state system of the acquisition, preservation, and development of historic and archaeological sites; the legal status of the Veterans and Pioneers Memorial Building; the activities, requirements, and financial position of the Montana Historical Society; any relevant statutes including the State Antiquities Act, and whatever other related topics the committee considers appropriate.

Approved March 22, 1977.

HOUSE JOINT RESOLUTION NO. 45

A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA DIRECTING THE MONTANA ARTS COUNCIL TO UNDERTAKE A CULTURAL RESOURCES STUDY WITHIN THE STATE AND TO REPORT THE FINDINGS OF THE STUDY TO THE LEGISLATURE.

WHEREAS, the cultural resources of Montana vitally contribute to the physical and mental health and welfare of the people of the state; and

WHEREAS, cultural resources contribute to Montana's commercial and industrial growth, attract visitors to the state, generate tax and other revenues in and for the state, and otherwise contribute to the economy of the state; and

WHEREAS, a lack of data~~and~~ information has hampered efforts of the Montana Arts Council, community arts organizations, and the Legislature in making decisions that adequately serve the artistic and intellectual needs of the people; and

WHEREAS, initial and continuing responsibility for studying the capabilities of cultural institutions, the public needs and desire for their services, and the role of the public and private sector in supporting and assisting such institutions and services rests with the state.

NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE OF REPRESENTATIVES OF THE STATE OF MONTANA:

That for the purpose of this resolution, "cultural resources" means things, events, or individuals which function to the advantage of the intellectual, creative, artistic, or esthetic needs or desires of the people of the state of Montana.

BE IT FURTHER RESOLVED, pursuant to Article IX, section 4, of The Constitution of the State of Montana, the Legislature directs the Montana Arts Council, a state agency to undertake a cultural resources development study. This study will include research and investigation into the following concerns and issues:

- (1) the economic and other contributions of local cultural institutions and services existing in communities throughout the state;
- (2) cooperative and cooperative effort and activities which involve local, state, federal, or private resources in the conservation, stimulation, and diffusion of cultural resources;
- (3) identification of cultural resources within the state;
- (4) definition of state and local government and private alternatives for roles in supporting and aiding the conservation, stimulation, and diffusion of cultural resources;
- (5) development of a plan for the cultural resources of the state of Montana;
- (6) identification of the needs of individual artists and scholars and the concomitant artistic and educational needs of the people of the state;
- (7) the need for preservation and maintenance of facilities and capital assets which conserve and develop cultural resources; and
- (8) development of a plan for the development of cultural resources.

BE IT FURTHER RESOLVED, that the Legislature directs the Montana Arts Council to make recommendations and recommendations to the Legislative Reference Library for publication as required by that committee. These recommendations shall include but not necessarily be limited to the following:

- (1) state level organization and structure for focus on the conservation, stimulation, and diffusion of cultural resources;
- (2) roles of federal, state, and local governments of the private sector in the conservation, stimulation, and diffusion of cultural resources; and
- (3) state cultural resources policy.

BE IT FURTHER RESOLVED, that the Legislative Interim Committee on Education shall assume the following responsibilities with respect to the study and its findings and recommendations:

- (1) monitoring of the ongoing processes of the study;
- (2) approval of the final report emanating from the study; and
- (3) proposal of recommendations to the Legislature.

BE IT FURTHER RESOLVED, that the directive of this resolution shall terminate June 30, 1979.

Approved March 31, 1977.

Let us imitate their caution,
if we wish to deserve their
fortune, or retain their bequests.
Let us add, if we please, but
let us preserve what they have left.

Edmund Burke, 1790

1. INTRODUCTION

I

Montana's Centennial of statehood is still more than a decade away. But, while short in duration, the history of Montana is rich in substance. A hundred years have passed since white men flooded into the Territory eagerly seeking the promise of a new Eldorado. Lewis and Clark's expeditionary odyssey preceded the deluge of miners by three score years. The history of Indian occupation and culture in Montana is centuries old. And, when considering Montana's geologic and paleontologic past, we must move back through the eons as if to the beginning of the world. Montana's history is literally as vast as her eastern plains and as challenging as her western wilderness.

During the 1977 Legislative session many hours were spent discussing Montana's historic and cultural heritage. The Legislature's decision to purchase C. M. Russell's "When the Land Belonged to God" was one example of legislative resolve to preserve the state's historic treasure. But most of the historical and cultural resource decisions before the legislature were handled on an ad hoc basis, and policy decisions regarding these resources were not always coordinated with financial commitments for implementing policy goals. The need for a more systematic and coordinated approach was apparent. As a result, the legislature passed HJR 18 which called for an interim study of the manner in which Montana collects, preserves, and disseminates her historical and cultural resources.

The Committee on Priorities assigned the study to the Interim Subcommittee on Education. The Subcommittee met six times during the interim to consider historic and cultural resources and to hear testimony from interested persons.

II

This report is not an exhaustive study of Montana's historic and cultural resources. Time and staff resource limitations precluded a thorough analysis of all the historical and cultural topics that require examination. Many areas were touched upon only lightly; others were left entirely for future study.

The subject of local records collection, preservation and diffusion, for example, is an important topic deserving attention. Local governments all across the state have significant repositories of documents - some of enormous historical value, many that serve current administrative and legal demands, and many more that should be destroyed because they have neither historical nor continuing value.

The Subcommittee, moreover, did not study the general needs of Montana's museums. Nearly 50 museums exist in the state that preserve and display various aspects of Montana's heritage. These museums run the gamut from small private displays of an individual community's heirlooms and artifacts to the state museum and gallery operated by the Montana Historical Society.

However incomplete the study may be, the Subcommittee felt that an important beginning had been made. Where the Subcommittee suggested legislation to the Forty-sixth Legislature, it did so in the belief that its recommendations would establish a solid foundation upon which to collect, preserve, and understand Montana's historical and cultural treasures.

2. HISTORICAL SOCIETY

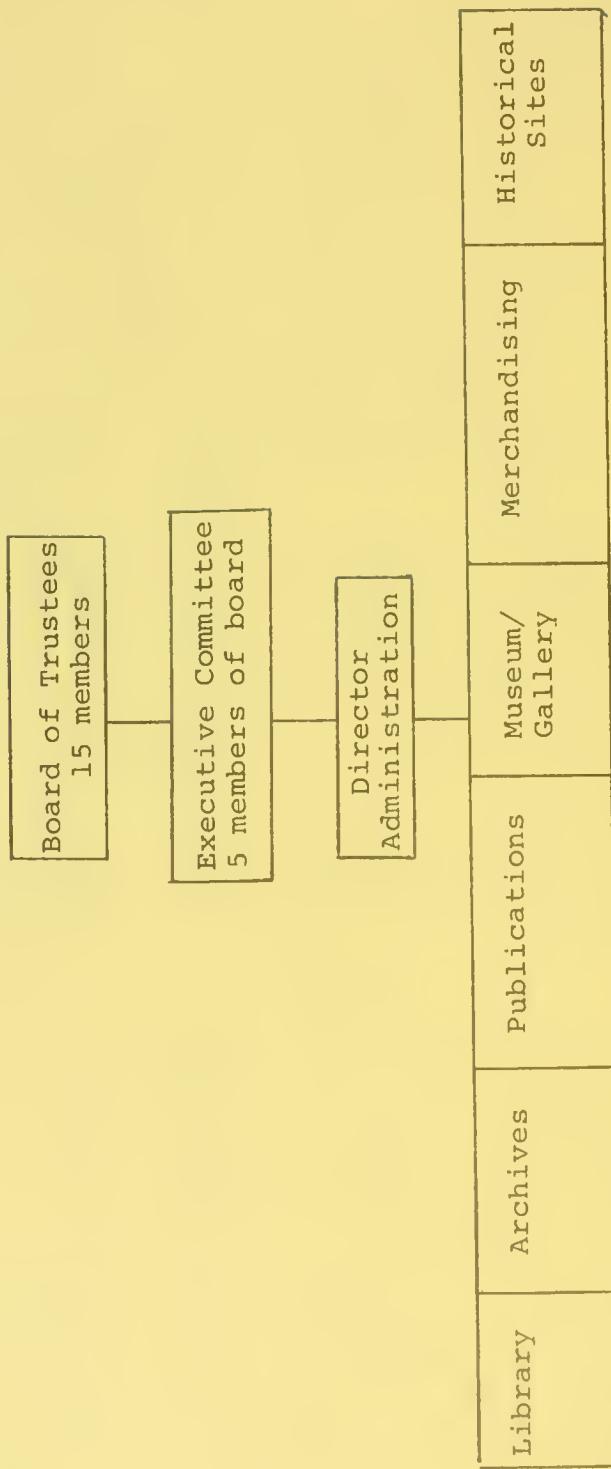
The Montana Historical Society is the "umbrella agency" under which the state manages its historical endeavors. HJR 18 directed the Interim Subcommittee on Education to study the "activities, requirements, and financial position of the Montana Historical Society." This chapter outlines the Society's responsibilities and programs and is followed by an analysis of program operations in several areas. More detailed descriptions and analysis of some programs operated by the Society are contained in subsequent chapters.

The Society traces its roots to 1865 when the Territorial Legislature granted a charter of incorporation. Shortly after statehood the Society officially became the Historical Society of the State of Montana. In 1949 the Historical Society became an agency of state government "for the use, learning, culture and enjoyment of the citizens of the state and for the acquisition, preservation and protection of historical records, art, archival and museum objects, historical places, sites, and monuments and the custody, maintenance, and operation of the historical library, museums, art galleries, and historical places, sites, and monuments." (22-3-101, MCA)

The Society is managed by a fifteen member board of trustees appointed by the governor. The trustees are charged with responsibility to collect, preserve and disseminate Montana's distinctive historical material to facilitate historical, governmental, scientific, and antiquarian research. In addition, the trustees are required to foster, promote and encourage the study of Montana history and cultural activities by lectures and publications.

The Society's responsibilities are divided into seven areas: Administration, Library, Archives, Publications, Museum/Gallery, Merchandising and Historical Sites:

ORGANIZATIONAL CHART



Program Descriptions

Director - Administration Program (4 F.T.E.s)

The administration program is responsible for administration, supervision, policy and financial controls established by the fifteen member board of trustees. An elected five member executive committee formulates recommendations for policies, programs and projects. Business, accounting, security, and information functions fall within the scope of the administrative program.

Library Program (6 F.T.E.s)

The policy of the library program is to acquire books and periodicals on Montana and Northwest history not found elsewhere in the state. The collection is therefore unique and extremely valuable. In addition to books and periodicals the Society complements its collections with maps, newspapers and photographs.

Archives Program (6 F.T.E.s)

The archival component of the Society has two areas of operation: private manuscripts and state records. Private manuscripts (papers of private individuals, businesses, groups, and institutions) constitute over 5000 cubic feet of material in the archives. State records, acquired under the provision of 22-3-202, MCA, total over 2500 cubic feet. These records include correspondence, personnel records, board meeting minutes, daily ledgers and journals of various agencies. Both record groups have grown nearly 400 percent since 1971. See chapter five for a discussion of the Archival Network System.

Museum-Gallery Program (4 F.T.E.s)

The museum-gallery program aims at collecting, preserving and displaying the history of Montana and the Northwest. The formal museum provides visual display of Montana history from the period before white contact through the industrial age. The Poindexter, Russell and Haynes Galleries display Montana's artistic heritage. Approximately 150,000 people visited the museum and galleries in FY 1978.

Publications Program (4 F.T.E.s)

This program has three basic publication responsibilities: Montana, The Magazine of Western History, The Montana Post, and occasional publications. Montana, The Magazine of Western History is published quarterly as a historical journal of the West. It has been published continuously since 1951. The magazine's present circulation is approximately 10,000. Subscribers come from all fifty states and many foreign countries.

The Montana Post is the official newsletter of the Society. Published quarterly, it is sent to all Society members. The newsletter contains information about Society activities and acquisitions plus illustrated features drawn from the library and archival collections.

Occasional publications include catalogs and brochures illustrating the Society's inventory of books, prints and art available under the merchandising program. The publication program also publishes occasional short monographs of material felt to have wide reader interest.

Not In Precious Metals Alone falls under the Occasional publications category. The book is a 320 page compilation of original documents and diaries taken from the Society's collections. It portrays Montana's history from 1804 to the present.

Merchandising Program (8.25 F.T.E.s)

The merchandising program is the major revenue producing program within the Historical Society. The program produces revenue from the sale of historical books, western art prints, Montana postcards, and original paintings and bronze works by regional artists. Sales are handled by mail order, over the counter, and by artist consignments. In addition, the merchandising program manages special projects. Acquisition of Charles M. Russell's "Where the Land Belonged to God" was acquired through legislative appropriations, private donations, and money generated by the merchandising program's sale of commemorative belt buckles.

Historic Sites Preservation Program (3 F.T.E.s)

The Historic Sites Preservation program was transferred in 1977 to the Historical Society from the Department of Fish and Game. The Historic Sites Preservation Program is discussed in chapter ~~sites~~.

Libby Dam Museum and Visitor Center (2 F.T.E.s) (8 Seasonals)

The Historical Society is under contract with the U.S. Army Corps of Engineers to provide a curator and administrative assistant for the museum and visitor center located at Libby Dam. The Society's involvement with the interpretive plan and exhibits at the Dam began in 1973. The museum at Libby Dam presents a regional history and interpretation of Northwestern Montana. The Society's involvement allows it to lend its historical expertise to the Corp's project and provides a regional outlet for the Society's merchandising and educational programs.

Selected Program Analysis

The museum-gallery program, as well as the library and archives program, are operating currently under tight budgeting restrictions. The programs seem to have reached a peak in terms of both available financial resources and space limitations. All of these programs fall far short of the Society's statutory responsibilities for collecting, preserving and disseminating Montana's historical resources. Additional responsibilities would have to be matched by additional general fund support.

The merchandising and publications programs deserve special attention. Neither of these programs receive direct federal or state support. They do receive 'subsidies' in the form of administrative support and operational space, heat and lights from the Society.

In the past, the merchandising program has been viewed as a major revenue producer that contributed profits to support the museum - gallery program and partially supported publications.

In recent years, the merchandising program has been less successful than in the past in providing support to other programs. Officials at the Historical Society point to several factors that have contributed to this situation. Trustee and management decisions and accounting procedures apparently placed the merchandising program into a difficult position for expeditiously meeting debts with existing revenue. In addition, the publication of Not in Precious Metals Alone was less profitable than had been hoped.

Contributing also to the merchandising program's financial difficulties has been the nature of a changing market for historical goods. The Society is no longer the primary supplier of such goods. Bookstores dealing in Montana history are no longer uncommon and private museums and galleries across the state offer collectors a wide variety of historical and cultural merchandise.

The Society is also constrained to a degree in its ability to compete with private enterprise operators and is conscious of the necessity to maintain the high standards expected of a state agency. In essence, while merchandising in the Historical Society can be characterized as "private enterprise" - there remain substantial differences between private sector businesses and the quasi-public status of the Society's merchandising program.

These constraints notwithstanding, critics of the program's operations argue that the trustees and management of the Society have not acted in an expeditious or innovative enough manner to solve the program's problems in order to put the merchandising program on a sound financial basis.

The publication program has also been criticized in the past for deficit operations. This program's primary mission is education. Through publication of Montana, The Magazine of Western History, the material collected in the Society's library and archives is disseminated to interested persons. The special library project, Not In Precious Metals Alone, was a prime example of attempts to make the Society's rich collection more generally available. The fact remains, however, that the publication program's survival continues to depend upon revenues generated by the merchandising program.

Summary

An institution is a combination of function and structure. The functions of the Montana Historical Society are to collect, preserve, and protect Montana's historical resources and to ensure that Montanans are able to use, understand, and enjoy materials entrusted to the Society. The Society's functions are integrated with its structure; seven program areas provide a comprehensive framework for accomplishing the goals of the Society. But the financial support mechanisms for the Society's programs is fragmented. Generally, the programs that aim at collecting, preserving and protecting historic resources are supported by general fund revenues. However, several programs at the Society that promote the use, understanding and enjoyment of historical resources are not supported by general fund money. This lends to confusion and difficulty when comparing the goals and the operations of various programs within the Society.

The Subcommittee makes no recommendations.

3. HISTORIC PRESERVATION PROGRAM

The State Historic Preservation Program was transferred from the Department of Fish and Game to the Historical Society by the Forty-fifth Legislature. The program's responsibilities, as outlined by the State Historic Preservation Officer, include:

1. Developing an administrative framework for the State Historic Preservation Program consisting of:
 - a. State Historic Preservation Office;
 - b. a professional staff working under direction of the SHPO, including, but not limited to:

Historian, Archaeologist, Architectural Historian, and Historic Architect;
 - c. a state review board;
2. Directing a comprehensive statewide survey of historic properties and maintaining State Survey Data;
3. Nominating historic properties to the National Register, and participating in determinations of eligibility;
4. Cooperation with federal agencies, state offices, local governments and private individuals in identifying registering, protecting, and managing historic properties;
5. Developing a state plan for historic preservation, and cooperating with all other planning agencies to insure protection of historic properties;
6. Cooperating with federal agencies in a review procedure to insure compliance with Sec. 106 of the National Historic Preservation Act, and other federal laws and regulations;
7. Liaison with historic preservation organizations and professional groups;
8. Developing and operating a program of public information and education concerning the National Register and grant program;
9. Administering the grant program within the state.

Simplified to its basic elements, the Historic Preservation Program consists of:

(1) Grants Incentives: The Federal Government has allocated to the states and territories more than \$41.5 million in matching grants for historic preservation. Montana has been allocated \$448,000 for FY 1978. The formula used by the National Park Service Office of Archeology and Historic Preservation to determine each state's grant was based on use of funds in previous years. This approach is designed to recognize those states that are leaders in preservation. (See Appendices A & B for a list of State Grants and Projects submitted for approval to the National Park Service for FY 1978.)

(2) Inventory/Nomination: Federal agencies, in cooperation with the State Historic Preservation Officer, are to locate, inventory, and nominate to the Secretary of the Interior all sites, buildings, districts, and objects under their jurisdiction or control that appear to qualify for listing in the National Register of Historic Places. Properties of national, state or local significance may be nominated. Final approval rests with the Secretary of the Interior.

(3) Review/Comment: Section 106 of the 1966 National Historic Preservation Act provides that:

The head of any Federal agency having direct or indirect jurisdiction over a proposed Federal or federally assisted undertaking in any state and the head of any Federal department or independent agency having authority to license any undertaking shall, prior to the approval of the expenditure of any Federal funds on the undertaking or prior to the issuance of any license, as the case may be, take into account the effect of the undertaking on any district, site, building, structure, or object that is included in the National Register. The head of any such Federal agency shall afford the [National] Advisory Council on Historic Preservation . . . a reasonable opportunity to comment with regard to such undertaking. (Emphasis added)

Section 106 of the National Historic Preservation Act does not give the Advisory Council veto power over federal or federally assisted projects; it does ensure that historical values will be considered in the planning process. The State Historic Preservation Office acts as the liaison for matters that are considered by the National Advisory Council on Historic Preservation.

There has been considerable confusion about the staffing requirements of the Historic Preservation Program in Montana. According to a September 1977 report by the Legislative Fiscal Analyst, "the joint education subcommittee anticipated only two F.T.E. [in the Preservation Program] which would then allow reasonable operating expenses and capital purchases within the \$50,000 [budget] limitation." The Fiscal Analyst's report went on to note that "Justification for moving the program from fish and game was to take advantage of professional expertise already employed in the historical society."

This rationale assumed that the Historic Preservation Program could be staffed, at least in part, by qualified personnel already employed in the Historical Society. The rules and regulations for the Program established in the Federal Register (Vol. 42, No. 183, September 21, 1977, pp. 47659-60) were not clear on the minimum requirements. Regulation 61.3 states:

(a) For purposes of the National Register and grants programs, the staff of the State historic preservation office shall include at a minimum one full-time professional in each of the following disciplines: history, archeology, and architectural history or architecture. All State professional staff members shall meet the minimum qualifications set forth in Section 61.5. Two or more part-time staff members may be substituted for one full-time person in any of the required disciplines, as long as the equivalent of one full-time professional is achieved in each discipline.

The State Historic Preservation Officer shall determine what other professional disciplines such as planning and law, and/or additional staffing are needed to carry out the responsibilities of the National Register and grants programs. State professional staff members approved by the Secretary prior to the effective date of this part shall remain approved until such time that they are no longer employed on the State staff.

(b) No later than October 1, 1978, each such staff shall include at a minimum at least one full-time professional in each of the following disciplines: history, archeology, architectural history, and historical architecture.

Until September of 1978 the program operated with three F.T.E.s: one program manager, one historian and one archeologist position shared between Montana State University and the University of Montana.

The Historical Society is currently attempting to meet the federal requirements of four full-time professionals. A historian and an archeologist are currently on the staff and an architectural historian is scheduled to join the staff on January 2, 1979. The Historical Architect position is being advertised.

Temporary funding for an additional F.T.E. to meet federal mandates for the Preservation program is coming out of vacancy savings and reallocations of existing appropriations support within the Historical Society. Society officials feel that available funding under this program will carry it through until April of 1979.

The Subcommittee makes no recommendation.

4. STATE ANTIQUITIES ACT

The 1973 State Antiquities Act is a major element of Montana statutes dealing with historic and archeologic protection and preservation. The Subcommittee used a proposed revision of the Act as a working tool for considering relevant changes in the current law (See Appendix C). The proposal includes the following significant revisions:

- (1) the proposal explicitly relates the Montana Antiquities Act to relevant existing federal legislation (National Historic Preservation Act of 1966) (section 1);
- (2) object and site registration processes are categorized into three distinct types of property (section 4);
- (3) all objects and sites on state lands are accorded protection irrespective of registration (section 5);
- (4) the proposal mandates that the Historical Society adopt criteria and standards for registration (section 6);
- (5) the director of the Historical Society is designated as state historic preservation officer and is directed to develop a comprehensive information system for cultural resources information storage and retrieval (section 7);
- (6) state agencies are required to identify sites or objects that might be impacted by development (section 8);
- (7) a procedure is established whereby the Historical Society would evaluate and comment regarding adverse impacts upon sites and objects affected by state agency actions. The Historical Society's opinion would advise whether or not there are reasonable or prudent alternatives for avoiding or mitigating adverse impacts (section 9);
- (8) mandates that within two years from the effective date of the Act all state agencies inventory properties under their control to determine the existence of sites or objects eligible for registration under the Act (section 10);
- (9) gives any "party" the right to file suit against violators of the Act without showing personal injury (section 11);
- (10) provides penalties for knowingly injuring, removing or destroying any site or object on state-controlled properties or private property without obtaining permission (section 12); and

(11) the Society is required to issue written findings whether there exist feasible and prudent alternatives for avoiding or mitigating adverse effects to sites and objects that meet registration criteria when such sites or objects may be damaged by state operated or licensed undertakings (section 13).

The proposed revisions generally incorporate many of the review and coordination features of existing federal legislation and executive orders regarding cultural resource responsibilities, identification, and protection. The State Historic Preservation Officer's legal authority and responsibility regarding cultural resources is more firmly addressed than in present state law. In addition, the proposal would establish a central information system for cultural resources.

Several features of the proposal would have considerable impact upon state agencies. 81-2510, for example, would mandate that all state agencies inventory properties under their control to determine the existence of sites or objects eligible for registration. Agencies would be required to establish rules, consistent with model rules adopted by the Historical Society, for site and object protection.

The proposed revisions have several shortcomings that the Subcommittee felt the Legislature might wish to address. Generally, the Antiquities Act as it is, or would be revised, is couched in negative terms. It might be useful to balance this with positive statements that encourage local and state government to shepherd cultural resources. Likewise, it might be desirable to accentuate local and state government responsibility to enhance wherever possible public access to, and enjoyment of, the sites and objects being preserved.

Several agencies that might be affected by revisions of the Antiquities Act were asked to respond regarding their concerns. Their comments are contained in Appendices D through G.

The Historical Society is working with affected agencies in order to arrive at a revision acceptable to the Society and other agencies. The Society will have its revisions prepared for consideration by the Legislature.

The Subcommittee makes no recommendation.

5. HISTORIC RECORDS NETWORK

The 1977 Montana Legislature enacted a law creating a Historic Records Network to facilitate exchange and cooperation in the use, acquisition, and preservation of historic records in the state. The system was to consist of cooperative agreements between the Montana Historical Society and the University System. The law charged the Society with responsibility for coordinating the administration of the program while the Society's staff was to aid university unit archivists and librarians in acquiring, cataloguing, processing, microfilming and preserving Montana's historic records.

In essence, the Historic Records Network system envisioned using archives and library programs in the University System and the Historical Society to provide depositories and a systematic acquisitions program for historic records on a regional basis.

Estimated expenditures on archival programs in fiscal year 1976-77 by units of the University System and the Historical Society were \$75,426 - or \$150,852 for a biennium. The estimated additional 1977-79 biennium cost for the network system, minus current expenditures, was \$395,010. (See Appendices H and I)

During its interim study, the Subcommittee found that the Historic Records Network law enacted by the 1977 Legislature is not operating. The law provided that the Network system would operate within the budgets of the Historical Society and the University System. No earmarked funds were appropriated to the Society or the University System for Network operations.

There was some effort during the interim by proponents of the Network system to have part of the network funded through library program budgets or discretionary funds controlled by University System presidents. But, according to University officials, unit budgets are built on a student contact/count basis - leaving no allowance for funding the Historic Records Network. Likewise, library budgets for the six units place top priority on supporting instruction-related programs. The Historic Records Network is not considered to have much priority within these budgetary limitations. In addition, discretionary funds available within the budgets of the University units are prioritized; archival functions are not a high enough priority to allow realistic competition for these funds.

There is some irony in the above argument. University officials seem to be saying that archival functions are not an essential facet of library operations and that archives are not instruction related. There is a good deal of validity to this idea given the current status of archival operations in the University System. But the argument is circular: without current use there is no funding; without funding there will be no use.

The Subcommittee considered three basic options regarding the exchange, use, acquisition and preservation of historic records in Montana. The first option appeared to be line item appropriations to the Historical Society and the University System for Historic Records Network operations to insure funding of the program. This approach was tried during the 1977 Legislature but failed.

A second approach involved funding an acquisitions program within the Historical Society for historic record collection. Such a program would be a stop-gap measure aimed at acquisition of historic records eminently in danger of loss or destruction. This option would involve hiring a "field acquisitions" person, a healthy travel budget, and clerical help to catalogue acquired record. Such an approach was not seen as an answer to questions of record exchanges or facilitating access to the records gathered.

A third option discussed by the Subcommittee was simply to maintain the status quo.

After lengthy Subcommittee discussion, it was decided that the most reasonable course for the next biennium would be to adopt the second option funding a field acquisitions program within the Historical Society. The Subcommittee's primary rationale regarding this recommendation was based on the belief that there needs to be some concrete evidence of the value, availability, and volume of historic record in Montana. A two-year 'demonstration project' aimed at both surveying the state and beginning to collect valuable historic documents was felt to be the necessary first step before the legislature could be convinced of the pressing need for funding a regional network system for historic records.

The Subcommittee recommended an appropriations bill--Appendix S--, not to exceed \$25,000 for each year of the 1979-81 biennium for one field person with travel expenses to locate and acquire valuable historic materials in Montana. The Subcommittee felt this project would be essential "to demonstrate the need" for future regional network systems.

6. VETERANS AND PIONEERS MEMORIAL BUILDING

HJR 18 directs the Interim Subcommittee on Education to study the "legal status of the Veterans and Pioneers Memorial Building." The inclusion of this element in the historical and cultural resources study came as a result of an attempt by the Montana Historical Society to utilize apparently unused office space on the third floor of the Veterans and Pioneers Memorial Building. The third floor has been occupied by the Sons and Daughters of Montana Pioneers and various veteran organizations for more than 25 years. (Veterans of World War I; Disabled American Veterans; Veterans of Foreign Wars; American Legion). In addition, there is a large meeting room and the Donald G. Nutter Memorial Trophy Hall on the third floor.

The Historical Society's efforts to utilize an office on the third floor in 1976-1977 led to the introduction of HB 375. The bill would have allocated, by law, the entire third floor "for the exclusive use of the veterans' and pioneers' organizations..." The bill was withdrawn after the second reading. On February 3, 1977, the Historical Society and the pioneer and veteran organizations adopted the following resolution:

"Be it resolved that the Board of Trustees of the Montana Historical Society continue to recognize the present use of the Veterans and Pioneers Memorial Building by the use of the various veterans organizations and the Sons and Daughters of Montana Pioneers on the third floor and if there are any changes proposed in future use of the third floor, various organizations concerned participate in the proposed planning.

In order to better understand the legal status of the Veterans and Pioneers Memorial Building, the Subcommittee researched the initial interest and movement for such a building. The Montana Legislature approved construction of a Pioneer Historical Society Building in 1924--to be occupied by the Historical Society of Montana and the Society of Montana Pioneers. Construction funds were to be raised by voluntary contributions. However, substantial donations failed to materialize and the movement languished for more than a decade. Then, in 1939, the legislature authorized the creation of a Veterans Memorial Fund Commission and provided for the construction of a Veterans Memorial Building. The Commission consisted of representatives from the Montana Spanish War Veterans, the Veterans of Foreign Wars, the American Legion and the Montana Disabled American Veterans. Again, however, the moneys collected were inadequate.

Under current law, the building is "devoted to the use of the United Spanish War Veterans of Montana, the Veterans of Foreign Wars of Montana, the American Legion of Montana, the Disabled American Veterans of Montana, the World War I Veterans of Montana, the Montana Historical Society, the Society of Montana Pioneers, and the Sons and Daughters of Montana Pioneers..." Current law also mandates that "there shall be provided in said building appropriate office quarters for the state headquarters and officers and employees of such veterans and organizations and for the librarian and other employees of the Montana Historical Society." (22-3-302, MCA)

During the Subcommittee's study of the legal status of the Veterans and Pioneers Memorial Building it identified three basic considerations:

- (1) Current law specifically authorizes a number of private organizations to occupy "appropriate" office space within the building;
- (2) The law does not specifically provide for adjudicating what constitutes "appropriate" space for private organizations within the building nor does the law define what constitutes "use";
- (3) There is no mention in current law as to whether or not private organizations occupying office space shall pay for space that is provided.

The Subcommittee asked the Deputy Director of the Department of Administration, Lawrence D'Arcy, if space allocation and rental charges for state buildings came under his department's purview. Mr. D'Arcy replied that they did but that the Department of Administration did not feel it had authority to define "use", allocate "appropriate" space, or to charge rent in the case of private organizations occupying office space in the Veterans and Pioneers Memorial Building. Mr. D'Arcy said that the \$2 per square foot per year charge assessed state agencies, including the Historical Society, has never been levied on space occupied by veteran or pioneer groups.

The Deputy Director was asked by the Subcommittee to provide an itemized list of all state property in Helena occupied by private people or groups. (See Appendix K). While several houses are rented at various rates, news agencies utilizing the capitol newsroom are not charged.

The Interim Subcommittee concluded from its study that the state's policy is unclear and ambiguous regarding office space occupied by other than state agencies. The Subcommittee therefore recommends a bill--Appendix R--, that extends the Department of Administration's current responsibilities to survey and allocate space in state buildings to include surveying and allocating space that is to be provided to private entities. The bill also clarifies the Department of Administration's responsibility to charge for space when it is provided to private entities. The only exception to the Subcommittee's proposed state policy of charging for space provided to private entities is when space is provided to the Sons and Daughters of Montana Pioneers' Organization. The Subcommittee felt that the Sons and Daughters' 1946 contribution of land justified an exception to the proposed state policy.

7. PRESERVATION OF MONTANA'S CONSTITUTIONS

The primary grant of authority from the citizens of the state to the officers of the government of Montana is based in the State Constitution. During the last century Montanans have had three constitutions. The first, written in 1884, was an unsuccessful attempt to obtain statehood for Montana. Five years later a successful constitution was drafted and adopted by Montana citizens. With admission to the Union, the constitution became the fundamental law of the state. In 1972 a shorter and more modern constitution was adopted by the people of Montana. Seen in historical perspective, Montana's constitutions represent a century of constitutional continuity, experience, and self government.

During the course of the study of historic and cultural resources in Montana the existence of Montana's three constitutions was brought to the attention of the Subcommittee. All three constitutions are stored in a metal file cabinet in the office of the Secretary of State. All three constitutions have suffered various degrees of damage due to exposure to light and variations in temperature and humidity. The older documents have been torn, dog-eared, and soiled by usage and both show some signs of brittleness due to aging. The 1972 Constitution is still in good condition; however, it can probably be expected to deteriorate faster than its predecessors due to the modern techniques employed in making paper.

A number of attempts have been made in the past to protect these documents. The Secretary of State began to investigate the possibility of protecting the 1889 Constitution as early as 1959.¹ In 1963 House Joint Resolution 19, introduced by Representatives Haines and Bardanouye, noted that:

The original Constitution of the State of Montana is an irreplaceable document of extreme worth to all citizens of the state, and steps should be initiated immediately directed at providing maximum protection for this document.

HJR 19 also requested the Secretary of State to investigate alternative means of protection for the original 1889 Constitution. The Secretary's investigations led him to the William J. Barrow Restoration Shop of Richmond, Virginia. The W. J. Barrow method of deacidification and lamination was then, and continues to be, the most highly recommended method for document restoration and preservation.²

1. Letter, Frank Murray, Secretary of State, to William J. Barrow dated March 12, 1959.

2. The W. J. Barrow Restoration Shop has been recommended by the Library of Congress and by the State Archivist.

The 1965 estimated cost of treatment for the 1889 Constitution by the Restoration Shop was between \$900 and \$1,000--depending upon the method of transportation.¹ The 1979 expense for having all three Montana Constitutions protected by the Barrow process is estimated not to exceed \$1,475.55. The cost is outlined below:²

ITEM

Round trip coach fare for authorized custodian of the Constitutions \$314

Subsistence allowance, round trip with Barrow's rough estimate of maximum examination and treatment time of 5 days \$450

Barrow's rough estimate for deacidification and lamination of:

1884 Constitution--130 pages (65 leaves)
Size 16 x 10 1/2 at 70 cents per page . . . \$ 91

1889 Constitution--324 pages (162 leaves)
Size 17 x 11 at 80 cents per page \$259.20

1972 Constitution--114 pages (57 leaves)
Size 14 x 8 1/2 at 65 cents per page. . . . \$ 74.10

20% contingency for round trip Helena to Butte; possible rail fare increase after May 25, 1979; city transportation for custodian while in Richmond, Virginia \$245.92

Microfilming of Constitutions (1 copy each) prior to transporting to Richmond, VA. \$ 41.33

TOTAL \$1,475.55

The Subcommittee recommends a bill--Appendix 0--, to preserve and protect the 1884, 1889, and 1972 original Montana Constitutions.

1. See, "Report to the Members of the House of Representatives of the 39th Legislative Assembly" from Frank Murray, Secretary of State, dated January 8, 1965.

2. The Secretary of State feels that the safest method of transportation for the Constitutions would be by train, accompanied by a deputy. Microfilming prior to shipment to Virginia is also felt to be a necessary precaution.

See Appendices L and M for Barrow's estimates and microfilming costs.

8. TRANSFER OF HISTORIC RECORDS

Montana has less than a decade's experience in archives and records management programs. A great deal remains to be done in Montana before the management of non-current records can be characterized as comprehensive, smooth, and efficient.

The Subcommittee on Education noted one specific area of records management fragmentation that deserves attention by the Forty-sixth Legislature. There are many examples throughout Montana statutes that require state officials and agencies to "keep" or "maintain" certain categories of records. For instance, the Secretary of State is required by ~~constitutional~~ mandate to "maintain official records of the executive branch and of acts of the legislature, as provided by law." 1972 Montana Constitution, Article VI Sec 4(3).

Interpreted literally, there is little room left for transferring such records either to a records storage center or to the state archives. Complicating these problems is the concern that once records are transferred from the possession of the original custodian to a records center or archives, the original custodian can no longer certify that records held by another entity are the true and exact records he originally received.

Over the years the Secretary of State has collected many of the state's most important historic and essential records. Included in the Secretary's collection are legislative records, corporation records, notarial records, and election records. The 1884, 1889, and 1972 Constitutions are also stored in the Secretary's office.

Gerald Ham, Wisconsin State Archivist, noted in a 1972 report that "the documents in the Secretary's office at Helena are generally well organized and preserved in clean and well-lighted stacks, but objectively there can be no question that these records logically belong with the State's other archival holdings." Mr. Ham suggested the following recommendations:

1. The Secretary of State and the Director of the Historical Society should work together in drafting a statutory change that would permit the legal transfer of the Secretary of State's non-current records to the archives.
2. Should the political and legal obstacles to such a statutory change be insurmountable, the Director and the Secretary should attempt to effect a physical transfer of the records to the archives on the basis of an indefinite deposit. This would permit the Secretary to retain legal custody while providing for archival care and research use of the records.

3. The 1889 State constitution, which is badly in need of repair and restoration, should be transported in a most secure way to the William J. Barrow Laboratory for lamination. It should then be properly enclosed and exhibited at either the Society or the State Capitol for the benefit of Montana's citizens.¹

As noted earlier, the Secretary of State's office is not unique in having non-current records and papers that they are obligated to "maintain." There are numerous agencies and boards that are required to maintain minutes and other records without a clear provision that allows for transfer to the state archives when records are no longer of use to the generating agency, board or commission.

The Subcommittee recommends a bill -- Appendix Q -- that authorizes original custodians to transfer official records to the state archives, provides for the confidentiality of such records, and establishes the legal status of certified copies of official records.

1. Gerald Ham, Montana Historical Society; The Library and Archives Program Report and Recommendations, 1972, pp. 23-24.

9. CULTURAL RESOURCES STUDY

The Forty-fifth Legislature passed HJR 45 directing the Montana Arts Council to conduct a cultural resources study during the 1977-79 interim and to report its findings to the Forty-sixth Legislature. The resolution envisioned a broad examination and inventory of Montana's cultural resources. The findings and recommendations of the study were to articulate a possible state level organization and structure for focusing the conservation, stimulation, and diffusion of cultural resources, and to suggest the relationships and roles of private and governmental entities in cultural endeavors. In its final stage, the study was to propose a state cultural resources policy to guide the legislature in cultural resource decisions.

The Interim Subcommittee on Education was given the role of monitoring the progress of the study and approving the study's final report. Several progress reports were received by the Subcommittee. At its final meeting in August 1978 the Subcommittee approved the cultural resource study's final report (Appendix N) which included the following recommendations:

1. Recommended State Cultural Resources Policy

The Montana Legislature adopts as state policy that the arts are essential to foster and to enhance the lives of every citizen, to preserve our cultural legacy, to advance our living heritage, and to insure a quality of life based on individual dignity.

2. Funding to Implement the Policy

- (a) It is recommended that a stable source of funding be generated at the state level which has its source in a special tax such as the coal tax.
- (b) There should be established a *goal* of \$1 state support to the arts for each Montana citizen.

In order to implement 2(a) above, the Subcommittee asked that a resolution be drafted urging the use of coal tax severance funds for cultural and historical resource projects. Upon investigation, it was discovered that the law for the disposal of coal severance taxes (15-35-108, MCA) had been amended during the 1977 legislative session to authorize allocations for the "protection of works of art in the state capitol and other cultural and aesthetic projects." The pertinent section of 15-35-108, MCA reads:

(h) 2 1/2% through June 30, 1979, one-half to the earmarked revenue fund for the purpose of acquisition, operation, or maintenance of sites and areas described in 23-1-102 and protection of works of art in the state capitol and other cultural and aesthetic projects. subject to legislative appropriations, and one-half to the earmarked revenue fund to be invested in a trust fund for the purpose of parks acquisition or management. After June 30, 1979, 5% to the trust fund for the purpose of parks acquisition or management. Income from the fund established in this subsection (h) may be appropriated for the acquisition of sites and areas described in 23-1-102 and the operation and maintenance of sites so acquired and protection of works of art in the state capitol and other cultural and aesthetic projects. (Emphasis Added)

In light of the 1977 amendment, the Subcommittee drafted its resolution to urge favorable consideration of funding requests for cultural and historical projects by the House Appropriations Committee and Senate Finance and Claims Committee. The resolution draws to the attention of the Legislature the 1977 inclusion in the coal severance tax law which authorizes appropriations for cultural and aesthetic projects.

The Subcommittee recommends a resolution -- Appendix P -- urging that a portion of coal severance tax funds be used to establish a stable source of funding for cultural and historical resource projects.

APPENDIX A

HISTORIC PRESERVATION GRANTS: FY 78

State grants

Alabama	\$1,000,000
Alaska	520,000
American Samoa	237,000
Arizona	424,000
Arkansas	894,000
California	1,345,000
Colorado	471,000
Connecticut	469,000
Delaware	565,000
District of Columbia	433,000
Florida	1,184,000
Georgia	797,000
Guam	268,000
Hawaii	413,000
Idaho	464,000
Illinois	990,000
Indiana	493,000
Iowa	734,000
Kansas	392,000
Kentucky	854,000
Louisiana	542,000
Maine	529,000
Maryland	774,000
Massachusetts	899,000
Michigan	838,000
Minnesota	812,000
Mississippi	494,000
Missouri	670,000
Montana	448,000
Nebraska	561,000
Nevada	403,000
New Hampshire	344,000
New Jersey	627,000
New Mexico	511,000
New York	1,396,000
North Carolina	1,076,000
North Dakota	287,000
Ohio	862,000
Oklahoma	382,000
Oregon	393,000
Pennsylvania	1,270,000
Puerto Rico	298,000
Rhode Island	872,000
South Carolina	1,492,000
South Dakota	557,000
Tennessee	542,000
Texas	1,192,000
Trust Territory	266,000
Utah	572,000
Vermont	532,000
Virginia	1,023,000
Virgin Islands	221,000
Washington	722,000
West Virginia	491,000
Wisconsin	538,000
Wyoming	396,000

STATE OF MONTANA

Projects to be SubmittedAnaconda

- A. Hearst Free Library
- B. Objectives: preservation
- C. Total Project cost: \$20,000
- D. Federal share: 10,000
- E. Non federal share: 10,000
- F. Submission date: March 1, 1978
- G. Beginning date: May 1, 1978
- H. Completion date: October 1978

- A. Deer Lodge County Courthouse (pending approval on Register)
- B. Objectives: preservation, stabilization
- C. Total Project cost: \$50,000
- D. Federal share: 25,000
- E. Non federal share: 25,000
- F. Submission date: June 1, 1978
- G. Beginning date: August 1, 1978
- H. Completion date: March 1979

Butte

- A. Butte Historic District: Charles W. Clark Mansion
- B. Objectives: preservation, restoration
- C. Total Project cost: \$48,000
- D. Federal share: 24,000
- E. Non federal share: 24,000
- F. Submission date: April 1, 1978
- G. Beginning date: June 1, 1978
- H. Completion date: December 1978

Billings

- A. Parmly Billings Memorial Library
- B. Objectives: preservation
- C. Total project cost: \$6,000
- D. Federal share: 3,000
- E. Non federal share: 3,000
- F. Submission date: April 1, 1978
- G. Beginning date: June 1, 1978
- H. Completion date: November 1978

Deer Lodge

- A. Montana State Prison
- B. Objectives: preservation, restoration
- C. Total project cost: \$16,000
- D. Federal share: 8,000
- E. Non federal share: 8,000
- F. Submission date: March 1, 1978
- G. Beginning date: June 1, 1978
- H. Completion date: December 1978

Projects To Be Submitted, cont'd.

Helena

- A. Helena Historic District: Parchen Bldg.
- B. Objectives: preservation, restoration, stabilization
- C. Total project cost: \$120,000
- D. Federal share: 60,000
- E. Non federal share: 60,000
- F. Submission date: April 1, 1978
- G. Beginning date: June 1, 1978
- H. Completion date: November 1, 1978

- A. Helena Historic District: Montana Club
- B. Objectives: preservation, restoration
- C. Total project cost: \$300,000
- D. Federal share: 150,000
- E. Non federal share: 150,000
- F. Submission date: March 1978
- G. Beginning date: June 1978
- H. Completion date: Feb. 1979

- A. Helena Historic District: Old Independent Record Bldg.
- B. Objectives: preservation, restoration
- C. Total project cost: \$135,000 (can be reduced)
- D. Federal share: 67,500
- E. Non federal share: 67,500
- F. Submission date: Apr. 1978
- G. Beginning date: June 1978
- H. Completion date: Jan. 1979

Projects To Be Submitted, cont'd.

Dillon A. Dillon Public Library
 B. Objectives: preservation, stabilization
 C. Total project cost: \$20,000
 D. Federal share: 10,000
 E. Non federal share: 10,000
 F. Submission date: June 1978
 G. Beginning date: August 1978
 H. Completion date: December 1978

Fort Benton A. Fort Benton Historic District: Old City Hall (Toll House)
 B. Objectives: preservation, restoration
 C. Total Project cost: \$10,000
 D. Federal share: 5,000
 E. Non federal share: 5,000
 F. Submission date: April 1978
 G. Beginning date: May 1978
 H. Completion date: November 1978

Great Falls A. Great Falls Central High School
 B. Objectives: preservation, restoration, stabilization
 C. Total Project cost: \$52,000
 D. Federal share: 26,000
 E. Non federal share: 26,000
 F. Submission date: March 1, 1978
 G. Beginning date: May 1978
 H. Completion date: January 1979

Kalispell A. Conrad, Charles E. Mansion
 B. Objectives: restoration
 C. Total project cost: \$20,000
 D. Federal share: 10,000
 E. Non federal share: 10,000 (value of donation)
 F. Submission date: March 1, 1978
 G. Beginning date: April 1978
 H. Completion date: December 1978

Missoula A. Missoula County Courthouse
 B. Objectives: preservation (of Paxton Paintings)
 C. Total project cost: \$60,000
 D. Federal share: 30,000
 E. Non federal share: 30,000
 F. Submission date: February 15, 1978
 G. Beginning date: March 1978
 H. Completion date: October 1979

BILL NO. _____

INTRODUCED BY _____

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE "STATE ANTIQUITIES ACT"; AMENDING TITLE 81, CHAPTER 25, R.C.M. 1947; AND REPEALING SECTIONS 81-2508, 81-2509, AND 81-2510, R.C.M. 1947."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 81-2502, R.C.M. 1947, is amended to read as follows:

"81-2502. Purpose of act. The purpose of this act is to provide a method of identification, acquisition, restoration, enhancement, preservation, conservation, and administration of the historic, archaeological, paleontological, scientific, and cultural sites and objects of the state of Montana; and for to ensure their use and enjoyment by the people; and for to benefit the people's health and welfare; and to facilitate the development of a state historic preservation plan that meets the objectives and requirements of the "National Historic Preservation Act of 1966", as it may be amended."

Section 2. There is a new R.C.M. section that reads as follows:

"Legislative intent. The legislature declares that it is its intent to discourage field archaeology on privately owned lands except in accordance with both the provisions and spirit of this act and to encourage persons having knowledge of the location of archaeological sites to communicate such information to the Montana historical society."

Section 3. Section 81-2503, R.C.M. 1947, is amended to read as follows:

"81-2503. Definitions. As used in this act:

(1) "Council" means the advisory council provided for in 81-2513.

{1} (2) "Society" means the Montana historical society.

{2} (3) "Board" means the state board of land commissioners.

{3} (4) "Historical" means after the advent of white man into Montana.

{4} (5) "Prehistorical" means before the advent of white man into Montana.

{5} (6) "Paleontological" means noncultural prehistorical material of a geological nature such as fossilized plants and animals.

{6} (7) "Site" means any historic, prehistoric, archaeologic, paleontologic, scientific, or cultural site upon lands subject to this act.

{7} (8) "Object" means any historic, prehistoric, archaeologic, paleontologic, scientific, architectural, or cultural object or cluster of objects or materials, buildings, structures, or combinations thereof.

{8} (9) "Registered site" means any site registered by the society as provided in this act or covered by cooperative agreement under 81-2508 section 4 of this act.

{9} (10) "Registered objects" mean any object registered by the society as provided in this act or covered by cooperative agreement under section 81-2508 4 of this act.

{10} (11) "Person" means any individual, partnership, association, society, institute, corporation or the agents thereof; the singular includes the plural.

(12) "Agency" means a state agency having jurisdiction over properties that might hold historic sites or objects."

Section 4. Section 81-2504, R.C.M. 1947, is amended to read as follows:

"81-2504. Registration of sites and objects on state land -- protection. The board is authorized on the recommendation of the society to designate for registration by the society sites and objects situated on land under the control of the state of Montana. -- The board may withdraw or reserve, at any time, sufficient state land administered by the board as may be necessary for the proper care and management of such sites and objects. -- No state land may be sold nor any development shall be allowed which will disturb the registered site or registered object unless it is protected or excavated in accordance with this act. -- The use of state land for the care and management of such sites and objects is hereby declared by the legislature to be a worthy object of the trust as specified in section 81-103. -- The board is authorized to take adequate steps to protect such sites and objects. Registration of sites and objects shall proceed as follows:

(1) (a) On properties controlled by the state of Montana the society may, in consultation with the council, register sites or objects. The society shall notify the appropriate state agency having jurisdiction over properties proposed for registration that it plans to register sites thereon. If the agency objects to such registration,

it may, within 30 days, submit its objections in writing to the society.
Within 30 days after submission of the objections, the society shall
make its final decision on the proposed registration, together with
a statement responsive to the agency objections.

(b) When registration of sites or objects on land controlled by
the board is involved, the board may withdraw or reserve, at any time,
sufficient land as may be necessary for the proper care and management
of sites and objects. No state land may be sold or development
allowed which will disturb the site or object unless it is protected
or excavated in accordance with this chapter. The use of state land
for the care and management of such sites and objects is hereby
declared by the legislature to be a worthy object of the trust as
specified in 81-103. The board may take adequate steps to protect
registered sites and objects.

(2) On properties not controlled by the state of Montana, the
society may, in consultation with the council, enter into cooperative
agreements with or secure the consent of the federal government, local
governments, and private landowners or the owners of objects to
preserve, mark, maintain, excavate, or otherwise deal with such sites
and objects upon such terms as may be agreed upon by the society and
owners. The cooperative agreements may provide that the sites and
objects be registered under this act or that the state of Montana
shall indemnify the owner for any liability for damage that may occur
while the property is under the control of the state of Montana."

Section 5. Section 81-2505, R.C.M. 1947, is amended to read
as follows:

"81-2505. Permit to excavate, remove or restore registered site or object. No person may excavate, remove or restore any registered site or registered object on state-controlled properties without first obtaining a permit from the society. Said permits are to be granted only after careful consideration of the application for a permit, and be subject to the strict compliance with the following guidelines:

(a) Permits may be granted only for work to be undertaken by reputable museums, universities, colleges, or other historical, scientific or educational institutions, societies or persons with a view toward dissemination of knowledge about cultural properties, provided no such permit shall be granted unless the society is satisfied that the applicant or applicants possess the necessary qualifications to guarantee the proper excavation of those sites and objects which may add substantially to man's knowledge about Montana and its antiquities.

(b) The permit must specify that a summary report of such investigations, containing relevant maps, documents, drawings and photographs be submitted to the society which shall in turn submit the report to an appropriate repository. The society shall determine the appropriate time period allowable between all work undertaken, and submission of the summary report.

(c) Permits will be preferentially granted to resident persons unless in the event that a state person is unavailable, unqualified, or uninterested in the work proposed for investigation. In the event that a permit is granted to a nonstate person, there must be a

provision that removed objects may not leave or must revert to the state of Montana, provided that all specimens so collected shall be and remain the property of the state of Montana, and provided further that the society may give permission for the loan of such materials for scientific or educational purposes."

Section 6. Section 81-2507, R.C.M. 1947, is amended to read as follows:

"81-2507. State register of historical register places -- criteria for registration. (1) The society is authorized and directed to compile and keep a register of all registered sites and registered objects. This register shall be known as the state register of historical register places.

(2) The society shall adopt, after public review, criteria and standards for the registration of sites and objects."

Section 7. There is a new R.C.M. section that reads as follows:

"State historic preservation officer -- plan -- annual reports. The director of the society is designated state historic preservation officer and is responsible for developing a state historic preservation plan. The state historic preservation officer shall develop a comprehensive information system for cultural resources information storage and retrieval. Annual reports prepared on such plans and programs in compliance with the "National Historic Preservation Act of 1966" shall incorporate an updated listing of the sites and objects on the state register of historic places and the National Register of Historic Places."

Section 8. There is a new R.C.M. section that reads as follows:

"Agency decisions affecting sites and objects. As early as possible and in all cases prior to an agency decision that might affect a site or object, the agency shall identify sites or objects that might be affected by the proposed undertaking and that may be eligible for registration."

Section 9. There is a new R.C.M. section that reads as follows:

"Model rules for protection of historic sites and objects -- agency adoption of rules. (1) The society, in consultation with the council, shall prepare and circulate guidelines for historic preservation in the form of model rules for adoption by public agencies. Following review and comment by the agencies and the public, the society shall adopt the model rules.

(2) Following adoption by the society of model rules, agencies shall prepare, circulate for public review, and adopt rules to protect sites and objects under the agency's jurisdiction. These rules shall, at minimum, meet the requirements established by the society's model rules. The rules shall include provisions to ensure that properties under the control of state agencies that might qualify for registration are not inadvertently transferred, sold, demolished, substantially altered, or the present use changed to the detriment of potential registration. The rules shall specify that, in questionable cases, the matter shall be referred to the society and the council for a timely opinion on the eligibility of the property for registration."

Section 10. There is a new R.C.M. section that reads as follows:

"Inventories of property under agency jurisdiction. (1) Within 2 years from the effective date of this act, all state agencies shall inventory properties under their control to determine the existence

of sites or objects as defined in this chapter and shall report the findings of such inventories to the society.

(2) The society may undertake such inventories as it determines necessary within the limits of available funding."

Section 11. There is a new R.C.M. section that reads as follows:

"Judicial remedy. The policies, duties, and procedures of this act are enforceable by any party on application to a district court of the state of Montana. The court may grant such relief, including injunctive relief, as it determines appropriate. Bonds for the maintenance of legal proceedings under this section may not exceed \$100."

Section 12. Section 81-2511, R.C.M. 1947, is amended to read as follows:

"81-2511. Violation as misdemeanor -- penalty. Any person who shall-willfully-injure,-remove-or-damage knowingly injures, removes, or damages any registered site or object thereon on state-controlled properties without obtaining a permit or shall-violate-any-of-the regulations-made-by-the-society-relating-to-state-parks,-historical, paleontological-or-prehistorical-sites,-buildings,-structures,-monuments or-objects,-shall-be who removes sites or objects from private or other lands not controlled by the state without the consent of the owner is guilty of a misdemeanor and shall upon conviction shall be fined not more than one-thousand-dollars-(\$1,000), or be imprisoned in the county jail for not more than six (6) months, or both such fine and imprisonment."

Section 13. Section 81-2512, R.C.M. 1947, is amended to read as follows:

"81-2512. Report of discovered sites or objects -- preservation. Any person conducting any activities, including survey, excavation or construction who discovers on any lands owned, leased or controlled by this state or any agency thereof, any object or objects site as

defined in this act, or who finds that an operation licensed or otherwise entitled by the state may damage a site or object shall promptly report to the society the existence of any such site, or object, or operation discovered in the course of such survey, excavation, or construction, and shall take all reasonable steps to secure its preservation. The society shall issue an opinion on whether the site or object meets the criteria for registration and, if so, shall determine and issue written findings whether there exists a feasible and prudent alternative to avoid or satisfactorily mitigate the adverse effects."

Section 14. Section 81-2513, R.C.M. 1947, is amended to read as follows:

"81-2513. Advisory council. The governor may appoint an advisory council from properly qualified persons in the fields of anthropology, archaeology, paleontology, architecture, and history and other related disciplines to advise and consult with the society and the board relating to all matters of Montana's antiquities."

Section 15. Repealer. Sections 81-2508, 81-2509, and 81-2510, R.C.M. 1947, are repealed.

-End-

STATE OF MONTANA



DEPARTMENT OF

FISH AND GAME

June 23, 1978

Mr. Jim Oppedahl
 Staff Researcher
 Montana Legislative Council
 Capitol Station
 Helena, MT 59601

RE: State Antiquities Act

Dear Mr. Oppedahl:

Thank you for the opportunity to comment on the proposed revisions to the State Antiquities Act. Our comments below reflect careful study of the Act by our staff and three years of experience in its administration by this agency through a member of our staff, Dave Conklin.

Generally, we feel that the present Act is difficult and expensive to administer, partially unconstitutional, and ineffectual in its results. Amendments are definitely in order and several have been suggested by our staff. However, we see some potential problems with the revised Act you sent us on June 6th as it is presently worded. We agree with your assessment that it is entirely too negative in tone and needs some incentives to make it work. In order to effectively carry out all of the actions envisioned in the Act it would take a massive amount of funding from the legislature (at least a million dollars in the first biennium) to do it properly. Since it is unrealistic to expect this, we feel that the Act should be trimmed back to realistic expectations.

Our present thinking on the provisions of the Act is outlined below:

LINE	PAGE	
13-15	1	The words acquisition and administration may conflict with existing state parks law (62-304) and should be stricken.
16	1	Paleontological and scientific are <u>non-cultural</u> resources and should be properly recognized as having very different values; thus later provisions in the Act must allow for a somewhat different treatment and use of these resources.

* Line, page, and section numbers used in Appendices D through G will not always match Appendix C since agency comments were to an early draft revision. The line, page, and section numbers used in Appendix C are relatively close to the first draft.

<u>LINE</u>	<u>PAGE</u>	
19-22	1	We don't believe it is necessary or desirable to spell out a planning process to be followed when the process itself is currently being questioned and is undergoing change.
3-25 -6	1 2	This is a negative provision and serves no purpose; it should be stricken.
8-10	3	"Registered" should include any site <u>or object</u> . This eliminates the need for lines 8-10. The cooperative agreement clause is redundant and should be stricken.
15	3	Historic should be stricken and expanded to include "any of the above".
11	4	The society should be allowed to register sites and objects <u>only upon recommendation of their eligibility by the Citizens Advisory Council</u> .
12-20	4	This should be the perogative of the agency rather than society and should read, "register sites or objects upon written consent of the agency or governing body having jurisdiction thereof or ninety days after notification by the society if objections are not submitted in writing".
11-25 -6	4 5	The State Land Department should only withdraw <u>registered</u> lands which have gone through the evaluation process and which the trust is compensated for.
8	5	Same as Line 11, Page 4. Also, registration should be by <u>written consent</u> only to avoid the administrative nightmare of an agreement when it is not necessary.
14-18	5	Our legal opinion on this Act in 1973 said this clause was impossible to do. Instead it should refer to the language in 67-808 on liability. This type of clause might better be put in a separate section with other <u>incentives for registration of properties</u> . Incentives which <u>definitely</u> need consideration to support registered sites are: <ol style="list-style-type: none">1. Taxing registered properties at their lowest tax rate.2. Restricting federal and state preservation funds to registered sites only.3. Not allowing registered property to be taken by eminent domain without an act of the legislature.

4. Exemption from zoning ordinances contrary to preservation.

<u>LINE</u>	<u>PAGE</u>	
21-25	5	From our experience the permit process is the most negative aspect of the Act, discouraging registration and scientific study of sites; and the administrative costs far outweigh the benefits. This entire section needs revisions which would mandate only written permission from the controlling agency and requiring filing of that permission on a standard form with the society. Summary reports should be up to the discretion of the managing agency.
1-25	6	Applicant screening, preferential treatment and requiring all collections to remain in state will only frustrate and discourage reputable scientific inquiry.
1-13	7	
16	7	" <u>Historical</u> " is commonly shortened to "historic".
20	7	
19	7	It is <u>very</u> important for preservation purposes that the register include "all sites and objects <u>recommended and declared eligible</u> for registration by the council" as well as registered sites. In this manner significant sites would be protected on two levels: <ol style="list-style-type: none">1. "Registered" receiving full protection.2. "Eligible" receiving recognition and some protection until the registration process is completed.
23	7	Standards should also be adopted <u>for the continued listing</u> of sites and objects.
24	7	Also, these criteria and standards should contain a specific provision that owners of sites and objects shall be notified of any council meeting at which action will be taken regarding them.
2-5	8	The SHPO designation should <u>not</u> be written into law to permit maximum flexibility for program management and to prevent overburdening one person with additional responsibilities. These lines should be stricken.

<u>LINE</u>	<u>PAGE</u>	
8-13	8	Compliance should not be automatically required and the annual report requirement should be simplified to an annual current listing of sites and objects which are <u>registered</u> , declared <u>eligible</u> for registration, and those that have been <u>removed</u> from the register.
19	8	Recommend "shall identify and report to the society" ... Rather than going through the bureaucratic, expensive and often useless exercise of establishing rules we recommend striking these lines and replacing them with the single notification and review procedure below:
		When any state, county or municipal agency finds or is made aware that its operation in connection with any state, state assisted, state licensed, or contracted project, activity or program adversely affects or may adversely affect any site or object included in the State Register of Historic Places, such agency shall notify the society and allow sixty (60) days to determine whether there is a feasible and prudent alternative to avoid or satisfactorily mitigate any adverse effect. During this time, the agency or society may conduct a public hearing in accordance with the Montana Administrative Procedure Act to receive information and views from government, public and private organizations and individuals.
22-25	9	
1-2	10	This inventory, or survey, should be restricted to merely a listing of properties already known or suspected by the agency since cost and time of any other type of inventory will be totally unreasonable.
3-4	10	This clause should be more definitive and read instead: "The society <u>shall</u> undertake a statewide survey to identify and document sites and objects as defined in this chapter".
17-19	10	Violations should concern only <u>registered sites regardless of land ownership</u> and without written <u>permission</u> rather than a permit.
23-24	10	This clause should also be <u>regardless of land ownership</u> without consent since it is in effect only beefing up the trespass laws.

Mr. Jim Oppedahl
June 23, 1978
Page -5-

LINE PAGE

17-22 11 This new clause should be stricken as it is covered
 in our recommendations on Lines 1-19, Page 9.

Thank you for this opportunity to comment.

Sincerely,

ROBERT WAMBACH, Director
Department of Fish & Game

Fletcher Newby
BY: Fletcher Newby
Deputy Director
Department of Fish & Game

c.c. Department of State Lands
Montana Historical Society

STATE OF MONTANA
DEPARTMENT OF HIGHWAYS

HELENA, MONTANA 59601

RONALD F. RICHARDS
DIRECTOR, DEPT. OF HIGHWAYS

July 12, 1978

N. REPT. 100-100-1

10:RPR

Montana Legislative Council
State Capitol
Helena, Montana 59601

Re: State Antiquities Act

Attention: Jim Oppendahl

Gentlemen:

Unfortunately, no one from the Montana Department of Highways was in attendance at the meeting on June 24, 1978 to discuss the proposed revisions to the 1973 State Antiquities Act. We have reviewed the provisions and submit here-with our questions and comments relative to this issue.

One confusing point albeit a minor one is that although "department" has been deleted in the list of definitions in 81-2503, it is used as part of the definition of "registered site" and throughout the entire text.

Section 1(6) of 81-2504 states that "no state land may be sold or development allowed which will disturb the site or object unless it is protected or excavated...." The reconstruction of roadways and bridges in an existing, confined transportation corridor could make compliance with this nearly impossible.

The funding of extensive inventories by the Department of Highways as proposed under new R.C.M. section 10 might be regarded as a diversion of highway funds, both federal and state. Furthermore, an inventory of the entire state highway system conducted within two years would have to be considered cursory at best.

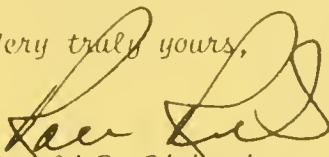
According to the new R.C.M. Section 9, sites or objects should be identified which might be affected by an agency's proposed undertaking and which may be eligible for registration. What if it appears that the undertaking will not affect the site or object adversely? And will there be some sort of consultation process with the society for determination of effect? Perhaps this matter could be clarified with the development of agencies' guidelines for historic preservation.

(continued on page 2)

Montana Legislative Council
July 12, 1978
Page 2

The issuance of written findings which are binding on "whether there exists a feasible and prudent alternative to avoid or satisfactorily mitigate the adverse effects" (81-2512) places the society in the position of making technical engineering judgments which are beyond their expertise.

We hope that these points will aid in the evaluation of proposed amendments to the present act. Thank you for the opportunity to comment.

Very truly yours,

Ronald P. Richards
Director of Highways

RPR/be

cc: Jack Beckert
Dave Johnson
D. L. Vanek
Steve Kologi
Ken Korte



DEPARTMENT OF STATE LANDS

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RECLAMATION

June 23, 1978

Representative Ann Mary Dussault, Chairman
Interim Subcommittee on Education
Capitol Building
Helena, MT 59601

Re: Antiquities Act Revisions

Dear Representative Dussault:

In a June 6, 1978 letter, Jim Oppedahl, staff researcher for the Legislative Council, requested the Department's comments concerning proposed revisions in the Antiquities Act. Thank you for the opportunity to comment; please accept this letter as the Department's testimony on the matter. The concept behind the proposed revisions is laudable, and the Department supports many of the proposed revisions. However, there are some serious problems with other provisions, and we would like to take this opportunity to point out these problems.

First, the provisions relating to protection of sites and objects on state land may be in serious conflict with the school trust as provided for in the Enabling Act and the Montana Constitution. It is the Department's opinion that 81-2504(1) (Section 41 is probably unconstitutional as it exists presently and also as proposed. In the present Act, the Montana legislature attempted to comply with the Constitution by declaring the care and the management of state land for sites and objects to be a worthy object of the trust as specified in Section 81-103. This same approach was used in an attempt by the legislature to avoid constitutional problems with the Natural Areas Act. Unfortunately, this attempt failed when the Attorney General ruled that school trust land could not be used as a Natural Area without compensating the school trust. The same problem exists in this case. Any attempt to use school trust land without compensating the school trust is very probably unconstitutional. Also, the Montana Constitution gives the Board of Land Commissioners the authority to control the use and disposition of state land. Any attempt to give any other body such as the Historical Society the authority to make decisions as to how school trust land should be used or disposed of is of questionable legal validity.

Section 9 of the proposed bill requires state agencies to identify sites or objections which may be eligible for registration before taking any action which may affect such sites or objects. Ignoring the school

Representative Ann Mary Dussault
Page Two
June 23, 1978

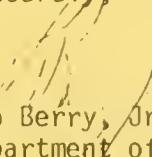
trust problems for the moment, the Department might support this type of provision if it was more specific as to what type of actions are contemplated. As an example, the Department will renew approximately 1,500 surface leases involving well over one-half million acres in 1979. If the Department were required to identify sites and objects on this land before these leases were renewed, the staff would have to be substantially increased. This is especially true in light of the broad definitions of site and object contained in section 3. The additional costs to the taxpayer would be substantial. A provision such as this which applied to well defined major actions taken by an agency may be financially justifiable. However, it would be difficult to define exactly what types of actions are covered. It should be noted that the Montana Environmental Policy Act probably already accomplishes the objectives of this section by requiring detailed reviews of major actions which significantly affect the quality of the human environment.

Section 11 of the proposed Act provides that within two years all state agencies shall inventory properties under their control to determine the existence of sites or objects. The Board controls over 5 million acres of surface. The definitions of objects and sites in section 3 of the proposed Act are very broad and ambiguous. It would require a great deal of time to survey even one acre of land in order to determine whether or not any objects or sites existed. In order to survey 5 million acres in two years, the Department would have to hire a large number of trained professionals. The cost to this Department would be of a significant nature.

In summary, while the Department supports the principles behind the revisions, we believe there are some very serious problems with the proposed bill. First, the bill is probably unconstitutional as it applies to school trust lands; secondly the program which the Department would be required to develop would cost the taxpayer an excessive amount of money. In addition, the broad language pertaining to the types of historical resources subject to the act should be more clearly defined.

If you have any questions, please do not hesitate to contact me.

Sincerely,


Leo Berry, Jr., Commissioner
Department of State Lands

DW/jb

Thomas L. Judge, Governor

MONTANA DEPARTMENT OF NATURAL RESOURCES & CONSERVATION

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OR WILSON F. CLARK OR ROY E. HUFFMAN, WILLIAM H. BERTSCHE, CHARLES L. HASH

TO: Chairman Ann Mary Dussault and Members
Interim Subcommittee on Education

FROM: Ted J. Doney, Director *11P*

SUBJECT: Revision of State Antiquities Act

DATE: June 23, 1978

As requested on June 6 by Jim Oppedahl, Staff Researcher, comments and concerns of the Department of Natural Resources and Conservation regarding the possible revision of the State Antiquities Act are presented in the enclosed memorandum. Any questions concerning this memo can be directed to Carole Massman of this Department's Special Staff.

Our remarks aim toward making the revision more workable for the Historical Society and more acceptable to the Legislature, state agencies, and the public. Hopefully, the ideas will be helpful in your subcommittee's deliberations.

MEMORANDUM

TO: Ted J. Doney, Director
Department of Natural Resources and Conservation

FROM: Special Staff

DATE: June 22, 1978

SUBJECT: State Antiquities Act of 1973 - Proposed Revision to be Discussed by Interim Subcommittee on Education on June 24, 1978

Special Staff will not attempt to address the question of whether the preservation of historical and cultural sites and objects is desirable, or whether it is a proper function of state government. The State Antiquities Act exists, apparently answering these questions affirmatively. We will therefore direct our comments to the bill as currently written, and to areas of special concern to this Department.

PROVISIONS ESPECIALLY AFFECTING DNRC

1. Determination of Action's Effects on Sites and Objects

Apparently from the date the Act becomes effective, it would be our responsibility to identify all sites and objects "that might be affected" and "that may be eligible for registration" prior to every DNRC decision. Implementing section 9 (adding a new section) would undoubtedly be cumbersome since all kinds of our actions (water use permits, timber harvests, transmission line sitings, even changing the water level behind dams) might well "affect" a site or object. Making these determinations would be especially complicated, because our personnel aren't trained to know whether, for instance, a stock water pond would inundate a teepee ring. Also, what we do with a determination, once made, isn't clear, nor is specific direction given to guide our subsequent action.

2. Preparation and Adoption of Rules

Section 10(2) (adding a new section) would require us to prepare, circulate and adopt rules, as least as stringent as the model rules, to protect sites and objects under our jurisdiction.

3. Protection of Potentially Registrable Properties

The rules required in Section 10(2) (adding a new section) must provide that properties "that might qualify for registration" can't be "transferred, sold, demolished, substantially altered, or the present use changed to the detriment of potential registration." This could have the effect of holding a large number of our actions and decisions in limbo indefinitely, since no time limits are set for decisions on registrations. (The section does call for a "timely opinion" from the society and council; however, this does not seem to be the same as a notification of plan to register, as described in Section 4.)

The section is confusing and provides no real guidelines for agencies. (Is the "timely opinion" binding? Can we proceed, with mitigating measures? Who decides on the measures and approves their adequacy? Can we appeal administratively, and, if so, to whom?)

4. Inventory

Section 11(1)(adding a new section) would require DNRC to inventory all properties under our control, to determine and report the existence of sites and objects, within two years. The inventory and the time limit are mandatory, and no mention is made of funding.

By way of contrast, Section 11(2) (adding a new section) makes inventories by the society discretionary, imposes no time limit, and recognizes "the limits of available funding." (One suspects that the society drafted this bill.)

Probably the exclusive (or at least the lead) inventory role should belong to the Historical Society. That organization has the interest, the overall legal responsibility, and the expertise. Most agencies don't have employees with "historic, prehistoric, archaeologic, paleontologic, scientific, and cultural" training, and chances of funding such FTE's are slim. Instead, the society should receive an appropriation for the inventory, hire or contract, and oversee the work. All other agencies should more logically play a supportive or cooperative role, within "limits of available funding."

5. Infringements upon, and Complications of, State Land Management

A. No administrative remedy is provided for a state agency still objecting to a final decision on registration by the society. (Section 4 amending Section 81-2504(1)(a)) Would court action then be required? An administrative appeal route, possibly to the state land board, should be provided.

B. The state land board should be required to give notice, and possibly hold a hearing, before withdrawing or reserving land for the proper care and management of sites and objects. Records should also be compiled and made available concerning all state land so withdrawn. (Section 4 amending Section 81-2504(1)(b))

C. Section 5 (amending Section 81-2505) provides that issuing permits to excavate, remove or restore sites or objects (registered or not) is the sole responsibility of the society. It seems that the managing agency (state land board, DNRC, etc.) should have some say in such decisions, but no provision is made for agency notification, consultation, or concurrence. The activity itself or its timing could obviously disrupt plans, management and administration of water projects, forest lands, etc.

6. Court Actions

According to Section 12 (adding a new section), any "party" (undefined) can enforce the act's "policies, duties, and procedures" by applying to a district court. Because injunctive relief is provided, many of our actions might be at least delayed in this way, and additional legal workload could be anticipated.

OTHER COMMENTS

1. Failure to Provide Means to Adequately Achieve All Stated Objectives

A. No legal or financial means are provided, nor is responsibility assigned, for the acquisition, restoration or administration of sites and objects.

Specific authorization should be included (in Section 4 amending Section 81-2504(2)) to "purchase or otherwise acquire," as well as to "preserve, mark," etc.

Restoration apparently would be accomplished only if an application is filed and a permit awarded. (Section 5 amending Section 81-2505) It seems that certain sites or objects would be of enough significance for the society to actively plan, seek, or accomplish restoration work before further deterioration.

With regard to administration of state-owned land, does the managing agency, the state land board, or the society manage identified and/or registered sites and objects? If the agency, does it develop its own management criteria?

B. No legal or financial means are provided to ensure the use and enjoyment of sites and objects by the people. To achieve this, sites and objects would have to be publicized, access provided, etc.

C. It's difficult to see how the program will benefit the people's health.

(A,B, & C above all refer to Section 1 amending Section 81-2502)

D. To be more inclusive, properties of local government (counties, cities, school districts, etc.) should be grouped with those of state government, not with those of federal government and private landowners. (Section 4 amending Section 81-2504(2)) "Agency" (definition 12) could be expanded to include local governmental units.

E. One stated intent is "to discourage field archaeology on privately owned lands" (Section 2 adding a Section 81-2502.1), and penalties are provided. However, apparently a landowner (of other than state lands) can consent to the removal of sites and objects (Section 13 amending Section 81-2511). It is not clear, but possibly that consent can be given even if a cooperative agreement exists. (Section 4 amending Section 81-2504(2))

F. The state land board "may" (permissive) withdraw or reserve land to manage sites and objects, and it "may" take steps to protect registered sites and objects. (Section 4 amending Section 81-2504(1)(b)) At least in the case of registered sites and objects, protection should be mandatory.

G. If the point of the act is to protect all significant sites and objects, the requirement to report discovered sites or objects should apply regardless of land ownership, and regardless of whether the operation was licensed or entitled by the state. (Section 14 amending Section 81-2512)

H. One stated intent is to encourage persons to report sites (Section 2 adding a Section 81-2502.1). However, Section 14 amending Section 81-2512 instead requires persons not only to report sites (and objects), but to take "all reasonable steps to protect them". No reward, compensation, credit, incentive, or other "encouragement" is provided.

Probably incentives (or penalties) should be provided regarding reporting. It will often be in the best interests of the person doing the surveying, excavating or constructing to simply proceed with his intended project without reporting, since reporting could result in delaying, altering or abandoning the project.

I. Shouldn't the penalty provision also apply to those who "injure" or "damage" sites or objects on private or other land? (Section 13 amending Section 81-2511)

2. Lack of Specificity

A. Who proposes sites for registration? (Section 4 amending Section 81-2504(1)(a)) Does a state agency's inventory and report requirement (Section 11) also constitute a nomination or proposal for registration? Hopefully not, since only the Historical Society or Advisory Council would have the overall perspective needed to determine the actual value, uniqueness, and eligibility of the site or object.

B. Section 9, adding a new section, stops before it concludes. What does an agency do once it's identified sites and objects that "might be affected" and "may be eligible for registration"? Does it report such sites and objects? Request a determination of eligibility? (In this case, time limits should be imposed so that decisions are not unduly delayed.) Proceed, taking mitigating measures? Automatically decide in the negative?

C. Section 10(2)(adding a new section) has the same problem. If either the agency or the society and council believe the site or object is eligible for registration, must the action stop or the decision be negative? Does the action or decision proceed, with mitigating measures? If so, who decides on the kinds of measure and approves their adequacy? Are there actually different treatments of a)sites and objects, b) potentially registrable sites and objects, and c) registered sites and objects?

D. Section 14 (amending Section 81-2512), again, is inconclusive. If the opinion indicates that the site or object meets registration criteria, will it be registered? When? Is the alternative described mandatory, or can another be proposed? If there's no feasible and prudent alternative, must the project stop? Is there an administrative appeal route for operators, the owner/manager of the land, or the agency authorizing the operation?

E. The number of persons to serve on the advisory council should be specified, along with their terms of office and frequency of meetings. The position of the council in state government organizational structure should be defined. Duties and powers should be enumerated, and whether members can receive travel expenses, etc., should be clear. Finally, a reasonable termination date for the council (unless extended) should be presented. (Section 15 amending Section 81-2513)

3. Acceptability

A. Guidance should be given concerning criteria and standards for registration (Section 7 amending Section 81-2507(2)). Age, uniqueness, and actual significance, for example, could be mentioned, as could a possible requirement that a site or object must meet more than one criterion to be eligible for registration. Indications of a strict, controlled approach might enhance the likelihood of the bill's passage; intimations of indiscriminate, wholesale registrations might kill it.

B. A provision could be added to reimburse an operator for delays in an operation, or for expenses incurred before a project is substantially altered or abandoned, due to the requirements of this act. (Section 14 amending Section 81-2512)

4. Compensation to the Trust

The use of state land for care and management of sites and objects is declared a worthy object of the trust (Section 4 amending Section 81-2504(1)(b)). The same declaration was enacted concerning the preservation of natural areas (Section 81-2701 et seq.), to no avail. Some provision to monetarily compensate the trust may be necessary if this act is to have any application on state-owned land.

5. Coordination Problems

A. In that information systems are essentially the responsibility of the Department of Community Affairs, Section 8 (adding a new section) should provide that "The state historic preservation officer shall in cooperation with (or assist) the department of community affairs in developing a comprehensive information system . . ." However, the development of and easy access to such a system will be essential for all state agencies so that timely decisions can be reached on the effect of proposed actions on sites and objects.

B. Perhaps a procedure could be outlined whereby state agencies would routinely consult with the society before taking actions, issuing permits, etc. Specific reference could be made to MEPA, but it's possible that an action not thought to warrant a PER (let alone an EIS) could affect a site or object unknown to the agency.

Such consultations seem especially critical before the inventories are completed.

Procedures now governing federal agencies (and state agencies using federal funds) could be the starting point, but apparently these are far from ideal.

C. Is it necessary to include federal lands? (Section 4 amending Section 81-2504(2))? Doesn't the National Historic Preservation Act already adequately cover federal lands, federal agencies, and state agencies using substantial amounts of federal funds? Will the state system duplicate, supplement, or be incorporated into the national system?

6. Necessity for EIS

Possibly an impact statement should be prepared by the society. Withdrawing or reserving numerous small, scattered parcels of state land, for instance, is only one aspect of the program, but it could disrupt or make infeasible larger operations, result in the loss of direct revenue to the school trust, and have other significant and controversial effects.

7. Discrimination

Section 5 (amending Section 81-2505(c)) provides preferential treatment of Montanans. Does this mean that, when a non-resident applies for a permit, an effort will be made to find a willing, qualified Montanan and award the permit instead to that Montanan?

It seems that permits should be awarded to qualified applicants. Even in the event of two pending applications (one by a non-resident and one by a Montanan) for the same work, a decision based solely on residency is discriminatory. The time the application was submitted, the best qualifications, and so on should be considered.

8. Consideration of Public Input

Section 7 (amending Section 81-2507(2)) should mandate that public opinion actually be considered in revising and formulating final criteria and standards. Present wording seems to allow the adoption of an unrevised draft proposal, following public review but regardless of the comment received. Also, agency review should be added.

The same problem recurs in Section 10 (adding a new section) regarding agency and public comment on model rules, and public comment on proposed agency rules. It is not enough to receive comment; that comment must then be tabulated, discussed, evaluated, and actually utilized in making revisions.

9. Lack of Time Limits

A. A maximum time (e.g., "appropriate time period not exceeding _____ months") should be added for report submission. (Section 5 amending Section 81-2505(b))

B. A calendar date deadline should be included for the preparation and adoption of model rules. (Section 10(1) adding a new section)

C. A deadline (of _____ months following adoption of model rules) should be provided for preparation and adoption of agency rules. (Section 10(2) adding a new section)

D. A time limit (_____ days) should be imposed for issuance of the opinion of the society and council on eligibility so that agency actions and decisions are not unduly delayed. (Section 10(2) adding a new section)

E. Does a site or object remain indefinitely in the category of being one that "might qualify for registration"? (Section 10(2) adding a new section) Inventories must be completed within two years, and final determinations on sites and objects identified in inventories should be made within a specified number of months or years so that protection without benefit of registration doesn't continue forever.

F. A time limit should be imposed for the issuing of the society's opinion on reported sites or objects as provided in Section 14 (amending Section 81-2512). A limit is especially critical here, since an activity or operation of some kind is already in progress at the time the report is made.

10. Vague Terminology

Some direction (definition, examples, minimums) could be supplied concerning the following:

a) "adequate steps" which the state land board can take to protect registered sites and objects (Section 4 amending Section 81-2504(1)(b)),

- b) "necessary qualifications" for proper excavation (Section 5 amending Section 81-2505(a)),
- c) "all reasonable steps" to secure the preservation of a discovered site or object (Section 14 amending Section 81-2512).^R Section 5 (amending Section 81-2505(b)) should give examples of an "appropriate repository" and specify that it be in Montana, or that a copy of the report be deposited in Montana.

11. Mechanical Error

The definition of "department" (formerly referring to the Department of Fish and Game) has been eliminated (Section 3 amending Section 81-2503); however, references to a "department" remain, including:

- a) page 3, lines 6 and 9
- b) page 6, lines 9, 16, and 18
- c) page 7, line 4
- d) page 12, line 4

APPENDIX H

HISTORIC RECORDS NETWORK

APPENDIX

Proposed Budget Totals - 1977-79 Biennium

<u>Unit</u>	<u>Initial Budget</u>	<u>Revised Budget</u>
Montana State University	\$196,954	\$93,637
University of Montana	\$99,239	\$100,063
Eastern Montana College	\$118,845	\$61,256
Montana College of Mineral Science and Technology	\$23,240	\$18,380*
Western Montana College	\$25,400	\$18,380*
Northern Montana College	\$18,600	\$18,680*
 TOTAL COST UNIVERSITY UNITS	 \$482,278	 \$310,396
Montana Historical Society	---	\$235,466
 TOTAL COSTS NETWORK	 \$717,744	 \$545,862

* Indicates probable staff addition.

NOTE The personnel budgets of the Montana Historical Society, Northern Montana College, Western Montana College, and Montana Tech do not include inflation/cost of living or incremental increases for the second fiscal year of the Biennium. These must be factored in for actual total costs. It was unclear as to exactly what factors will be used for figuring salaries for the coming biennium. Also, the rate of employee benefit calculations varies from one unit to the next.

Present Expenditures on Archival Programs (estimated) 1976-1977 Fiscal Year

Montana Historical Society	\$36,901
Montana State University (est)	\$17,025
University of Montana (est)	\$20,100
Eastern Montana College (est)	\$ 800
Other Units (est) - total for all three	\$ 600
 TOTAL EXPENDED BY STATE 1976-77 FY	 \$75,426
	x 2
	\$150,852

Total network costs \$545,862 less present expenditure \$150,852 = new money needed

\$395,010

HISTORIC RECORDS PROBLEMS IN MONTANA

Brian Cockhill
State Archivist
Montana Historical Society
January 18, 1978

This is little more than an overview of the major problems encountered and anticipated from the course of our work with Historic Records in the last five or six years.

Private Manuscripts and Records

The Society believes that this aspect of our program is generally acceptable from a technical point of view. The past Legislative Assembly appropriated a substantial increase in budget and with this we have taken steps to establish a viable program. While we do not have sufficient staff to completely eliminate our backlog of unprocessed materials, neither do we have adequate work space to accomodate more than one additional person. Technically, we have the ability and the knowledge to carry out all functions of a modern manuscript repository. We lack some preservation equipment but that can be acquired in the next several years.

The most serious problems in this area of operation are the rapid decline in available storage space and the lack of ability to systematically acquire new materials. The question of additional space can only be corrected by further construction and is probably not suited to the deliberations of this committee. Systematic acquisition of materials is a problem with a much more readily achieved solution. The question arising is what course of remedy to pursue. For the past two years, we in the archival profession in Montana have advocated the establishment of a regionally oriented records network. This approach would use the archives programs and libraries of the University System and the Historical Society to provide regional depositories and a systematic regional acquisitions program (for a fuller explanation see attachment). This concept was approved by the last Legislature but it was not funded and, in consequence, has had little chance of operation. This program might, also, be the answer for the local records dilemma (which is discussed below) and could even relieve some pressure in the deposit of State Records.

As an alternative to the network concept, the legislature could fund another position at the Historical Society for an acquisitions field person who would be responsible for a systematic solicitation of materials throughout the State. The operations of manuscripts programs in the University system would not be a factor in this approach and the state's emphasis would be placed on records operations at the Society. This alternative would require, in addition to salary, a fairly healthy travel budget to enable the field person to thoroughly cover all regions of the State not just the major communities.

In any regard, something must be done quite soon to allow the State to make a concerted effort to acquire and preserve private historic records. These materials are rapidly being lost, destroyed or gathered by other states. Montana's documentary heritage is indeed in danger. We must have the capability of seeking materials in Scobey, Lambert and Eureka as readily as we have in Helena and Missoula.

State Records Operations

The operation of the State Records Law (R.C.M. 1947 82-3207-09) is somewhat episodic. The State Archives has dealt with all demands we have received to date but the problem remains that we do not systematically acquire state records. Materials come to us only as space pressures and other factors force agency administrators to transfer files. In consequence, efficiency is denied, for some agencies retain records which may be forty or fifty years old and with no use to the office in an operational sense. Because many of these records are stored away, public access becomes a problem which usually results in frustration for the individual user. Further, by retaining these materials in less than adequate facilities there is great danger that items will be lost, destroyed, or damaged.

The present law is adequate as far as it goes, but it does not address the problem of orderly retirement of permanently valuable inactive records. While I cannot suggest specific language that would rectify this problem, agency administrators must be encouraged by statute to systematically transfer valuable but inactive records to the State Archives. This continuing failure is the greatest problem facing State Records operations. It has resulted in lost records, frustrated researchers, and inefficient use of capital office and storage space.

Another factor that should be considered in this regard is the continuing noncompliance with any facet of State records laws. Many agencies have simply destroyed or dispersed records rather than follow established procedures and claimed, after the fact, that they were unaware of Montana's statutory requirements. This has resulted in some very unfortunate losses and could become very crucial should government require some of these documents in the future. Whether penalties for noncompliance are the answer I do not know, but I do believe that the State cannot afford to tolerate this casual attitude indefinitely.

Regarding facilities and staff for the State Archives, we are about at capacity and can operate for a few more years. I am aware that this committee probably will not address such questions but I mention it as something that will need to be addressed within the next two bienniums.

Local Government Records

Most states have a program of some format to control the destruction, disposition, and transfer of local government records. Montana has nothing of this nature and, as a result, places a valuable body of documentation in constant jeopardy.

The only control of the disposition of local government materials is the required approval of officials of the Local Government Services Bureau before destruction may be undertaken (R.C.M. 1947 59-514-15). As a consequence of the lack of any meaningful control, records have been destroyed which had value, others have been kept which were unnecessary, no consistent approach has been established, efficiency of operations has suffered, and public access has been severely hampered.

While the political implications arising from the possible extension of fuller state control over this area of local government operations are significant, I do believe some action must be taken. Not only is effective government hampered by this situation but a priceless resource for local research is endangered. At the very least, more formal guidelines for the retention and disposition of inactive records must be established. At some time in the future, an inventory of all local government records (probably grant funded) should be undertaken. Such a survey would assess the damage already done and also allow more careful planning for the disposition, preservation, and use of permanently valuable local government records.

It is possible that the operation of a state records network would ease some of the objections local government officials might have to state control of their inactive records. Network units could provide regional depositories for inactive permanently valuable local government records. This would not remove them too far from the generating city or county and would bring them together where preservation could be assured and public access would be made simpler. A central storage facility at Helena for local government records would be objectionable both because of cost and local sentiment.

In the final analysis of this situation, local government records present the greatest single problem for archivists and government in Montana.

Summary

The problems discussed above are not necessarily unusual to Montana. What is unusual is that they all occur with such impact in one state. The reason for this is simple, Montana neglected this aspect of government longer than most states. The Historical Society, until very recently, has been treated as a poor relative; a state archives was not created until 1969; no encouragement was given to the historical community in Montana; and no thought was given to problems arising from the creation of local government records. I doubt that all these problems can be made to disappear in the next biennium but I do believe that it is in the interest of Montana and her citizens to make greater efforts to preserve her past. Such activities are not frivolous. They have benefit for government and the State's citizens and should be supported.

MONTANA HISTORICAL RECORDS NETWORK

The creation of a coordinated network approach to the preservation of historical documentation has become increasingly necessary with the passage of the last several years. Montana has a rich and varied history and records documenting most facets of the past still exist, but at the same time the State has a very small population and its resources are limited and as a consequence relatively little has been done to further preservation. To insure the survival of the State's heritage use of available and anticipated resources must be maximized. Such efficiency of operation calls for cooperation and coordination, not competition and independence. In the past, the Historical Society, units of the University System with archives/manuscripts programs, and private groups have competed for acquisitions, for funding, and for publicity, with slight cooperation and little thought to the ultimate goal -- preservation of the past for the future. While a state sponsored coordinated program cannot address the role of private collecting activities, it can bring together state institutions involved in this work, to adequately distribute resources, to avoid competition, to efficiently secure acquisitions, to provide documentation and services to local researchers, and to provide maximum access to students and citizens seeking primary materials, without regard to their location in the State.

Montana is extremely large, and no single program presently existing can adequately cover all of it, both in terms of acquisitions of materials and in providing research services and information. What this state must look to, as have other states, is a network of records repositories which will provide service and documentation to a region and will offer a facility for the deposit of materials of a regional nature.

Such a network would consist of the Montana Historical Society archives/manuscripts program, and the libraries of the six university units. While this does not offer a perfect geographic distribution of facilities, it will come much closer to adequate service than is presently the case.

While the Historical Society would coordinate efforts of and provide central services for the network, major guidance would come from a network steering committee or group which would consist of one member from each institution in the program. This committee would decide questions of priorities, acquisitions policies and areas (both subject and regional), and long-range planning. It should be noted that decisions of acquisitions policy and priorities should probably be the result of a vote of two-thirds of the committee to avoid any suggestion of competition or friction.

Funding for the network program would be budgeted and appropriated separately from the budgets of the institutions to which the various archival/manuscript units would be attached. The money would be appropriated to the Historical Society under a separate program and the amounts budgeted for each unit would then be transferred to their control for expenditure. This program must go forward only as a separate entity. There should be no suggestion that monies for historic records operations should be taken from library budgets or in anyway influence appropriations for the libraries. This would not, however, mean that the manuscripts units would be removed from the control of the respective library or institution, only that funding would be separated.

The level of operations for each unit (staff, services, holdings, facilities) shall be determined by that unit, which would budget accordingly. Attempts should be made, however, to establish network-wide standards for processing, descriptive aids, and indices, to facilitate the centralization of information about the State's manuscript holdings. Such centralization and standardization would greatly facilitate reference work, particularly mail requests, and would ease the difficulties in producing cumulative state holdings guides. Work on state programs, central guides, acquisitions, etc., should be in cooperation with the Montana Historic Records Committee (an arm of the National Historic Publications and Records Commission), particularly where additional grants might be sought.

Acquisitions would be handled on a cooperative basis, with one fulltime staff member responsible for contacts and field work. This person would collect for all units of the network, with the acquisition of materials based on the areas of collection of each unit. The staff member would work out of the Historical Society and be paid through that portion of the program's budget which would be assigned to the Society. Staff members of the various units would also be encouraged to develop local contacts in their region for acquisitions and should do some field work in their immediate area to broaden their professional experience and develop better understanding of their region and their collections.

As stated earlier, within the network, the Historical Society would act as the coordinating agency with the major responsibility for operation of the system. The Society's archives/manuscripts staff would: process collections and produce finding aids for the smaller units of the system which would not have manuscripts staff; maintain a central bank of information about all collections in the network, regardless of location; provide cooperative field acquisition services for all units of the network; if necessary, operate training and intern programs to provide necessary knowledge about archival and manuscript practices to the reference and manuscript staffs of the network units; coordinate where necessary the transfer of collections between units to insure ease of access to researchers; microfilm and disseminate copies of key collections to those units needing them for ongoing research; and generally administer the program to insure the greatest efficiency in the acquisition, preservation and use of the State's historical records.

In addition to the Society's role within the network, the archives/manuscripts staff would continue with their responsibilities within the agency. These would include: processing and preservation of the private manuscripts held by the Society, both backlog and new acquisitions; maintenance and service of the State Archives (records of State agencies, a responsibility of the Society by statute); cooperation in the State's records management programs; duties of a general historical nature, i.e., research, publication, tours, workshops, and speaking to groups.

In summation, justification for applying the network concept in Montana includes two basic considerations. First, a system such as this approaches maximum efficiency for acquiring, preserving and making available the primary sources of a large state; Montana's space will always confound the operations of historical records programs. Secondly, a cooperative network system is the most economical approach to a statewide records operation. Montana cannot afford three or four competing institutions, all trying to cover the entire state and attempting to collect in all subject areas. Cooperation also insures the best possible service to the patron by grouping materials by region and subject and minimizing the necessity of travel to conduct research.



APPENDIX J
**VETERANS ADMINISTRATION
CENTER**
FORT HARRISON, MONT. 59636

April 20, 1978

IN REPLY 436/001
REFER TO:

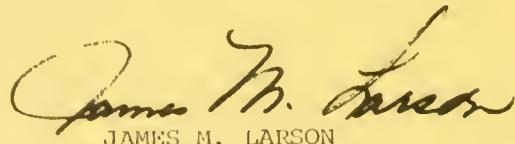
James Oppedahl
Legislative Council
State Capitol Building
Helena, Montana 59601

Dear Mr. Oppedahl:

1. Pursuant to your request I am forwarding herewith Paragraph 3402, of Title 38 of the United States Codes, which is the statute specifying that the Veterans Administration may furnish space and office facilities for the use of paid full-time representatives of the National Service Organizations. However, it should be noted that this authority is limited to those paid full-time representatives of National Service Organizations who are involved in the preparation, presentation, and prosecution of claims under laws administered by the Veterans Administration and does not pertain to National Service Organization Officers who are not involved in the preparation, presentation and prosecution of claims with the Veterans Administration and has no bearing to the State or National Offices of such Organizations.

2. I hope that the information I have furnished you is sufficient for your needs.

Very truly yours,


JAMES M. LARSON
ASSISTANT DIRECTOR

RECEIVED

APR 24 1978

**MONTANA LEGISLATIVE
COUNCIL**

§ 3102. Recognition of representatives of organizations

(a) (1) The Administrator may recognize representatives of the American National Red Cross, the American Legion, the Disabled American Veterans, the United Spanish War Veterans, the Veterans of Foreign Wars, and such other organizations as he may approve, in the preparation, presentation, and prosecution of claims under laws administered by the Veterans' Administration.

(2) The Administrator may, in his discretion, furnish, if available, space and office facilities for the use of paid full-time representatives of national organizations so recognized.

(b) No individual shall be recognized under this section--

(1) unless he has certified to the Administrator that no fee or compensation of any nature will be charged any individual for services rendered in connection with any claim; and

(2) unless, with respect to each claim, such individual has filed with the Administrator a power of attorney, executed in such manner and form as the Administrator may prescribe.

(c) Service rendered in connection with any such claim, while not on active duty, by any retired officer, warrant officer, or enlisted man of the Armed Forces recognized under this section shall not be a violation of sections 203, 205, 206, or 207 of title 18. (Amended P.L. 91-24, § 12(b).)

§ 3103. Recognition with respect to particular claims

The Administrator may recognize any individual for the preparation, presentation, and prosecution of any particular claim for benefits under any of the laws administered by the Veterans' Administration if--

(1) such individual has certified to the Administrator that no fee or compensation of any nature will be charged any individual for services rendered in connection with such claim; and

(2) such individual has filed with the Administrator a power of attorney, executed in such manner and in such form as the Administrator may prescribe.

§ 3104. Recognition of agents and attorneys generally

(a) The Administrator may recognize any individual as an agent or attorney for the preparation, presentation, and prosecution of claims under laws administered by the Veterans' Administration. The Administrator may require that individuals, before being recognized under this section, show that they are of good moral character and in good repute, are qualified to render claimants valuable service, and otherwise are competent to assist claimants in presenting claims.

(b) The Administrator, after notice and opportunity for a hearing, may suspend or exclude from further practice before the Veterans' Administration any agent or attorney recognized under this section if he finds that such agent or attorney--

(1) has engaged in any unlawful, unprofessional, or dishonest practice;

(2) has been guilty of disreputable conduct;

(3) is incompetent;

(4) has violated or refused to comply with any of the laws administered by the Veterans' Administration, or with any of the

APPENDIX K



STATE OF MONTANA
DEPARTMENT OF ADMINISTRATION
DIRECTOR'S OFFICE
MITCHELL BUILDING
HELENA, MONTANA 59601

THOMAS L. JUDGE, Governor

January 30, 1978

RECEIVED

JAN 30-78

MONTANA LEGISLATIVE
COUNCIL

Mr. James Oppedahl, Legislative Researcher
Legislative Council
Research Division
Room 138
State Capitol
Helena, Montana 59601

Dear Mr. Oppedahl:

Reference is made to our January 23, 1978, meeting regarding the status of the use of state buildings by other than state government agencies.

Listed below are the results:

<u>1. BUILDING</u>	<u>OCCUPIED BY</u>	<u>SQUARE FOOTAGE</u>	<u>MONTHLY RENT</u>
1501 6th Avenue Garage	Mr. Klean (Grounds Contractor)	600	\$ 40
1311-13 8th Avenue	Mr. Klean	2,197	185
Cogswell Basement	York Refrigeration (Mechanical Contractor)	786	131
Veterans & Pioneer	Veterans Organizations	8,000	None
Capitol & Mitchell Cafeterias	Beeco Foods	1,020	170
Capitol Building	News Media	180	None

2. The following state purchased dwellings are rented to private individuals. Measures were taken to insure that these facilities were not needed by state agencies. The Renters pay all utilities.

<u>BUILDINGS</u>	<u>SQUARE FOOTAGE</u>	<u>MONTHLY RENT</u>
1410 8th Avenue #1	1,194	\$175
1410 8th Avenue #2	1,194	155
1410 8th Avenue #3	1,194	175
1410 8th Avenue #4	1,194	131
1225 8th Avenue	1,980	220 plus 220 (damage deposit)



Mr. James Oppedahl, Legislative Researcher

Page 2

January 30, 1978

3. At times state agencies will contract with various private professional consulting groups such as management consultants, energy consultants, Certified Public Accountants. While these firms are working in the Capitol Complex they are given office space on a temporary basis, usually two or three weeks. It usually depends on the duration of the contract.

Questions regarding this correspondence may be directed to this office.

Sincerely,

Lawrence E. D'Arcy.
Lawrence E. D'Arcy
Deputy Director

LED:dr

APPENDIX L

W. J. BARROW RESTORATION SHOP, INC.

STATE LIBRARY BUILDING

ELEVENTH AND CAPITOL STREETS

RICHMOND, VIRGINIA 23219

TELEPHONE (804) 786-2310

August 28, 1978

Mr. Jim Oppedahl
Legislative Council
State Capitol
Helena, Montana 59601

Dear Mr. Oppedahl:

Thank you for your telephone call relative to the restoration of some books. It is difficult to give the cost of restoration without seeing the material to be restored, but from your description of the books our estimate of cost is enclosed on a separate sheet.

Enclosed is our price list which will give you some idea of our charges. On page one you will find an explanation of "Variation in Price" and on page two under "Record books" you will find our average charge for books such as Deed, Will, and Order books. On page four you will find information on packaging and shipping.

We appreciate your inquiry and hope we may be of service to you. If you should need additional information please feel free to write or call us.

Sincerely yours,

Ruth M. Barrow

(Mrs.) Ruth G. Barrow

P. S. Also enclosed is a small sample that has been deacidified and laminated and our brochure.

RECEIVED
AUG 31 1978
MONTANA LEGISLATIVE
COUNCIL

W. J. BARROW RESTORATION SHOP, INC.

STATE LIBRARY BUILDING

ELEVENTH AND CAPITOL STREETS

RICHMOND, VIRGINIA 23219

TELEPHONE (804) 786-2310

August 28, 1978

Mr. Jim Oppedahl
Legislative Council
State Capitol
Helena, Montana 59601

Estimate for restoring the following books-

Deacidifying and laminating-

1884-130 pages, size 16 by 10-1/2
130 pages (65 leaves) @ 70 cents per page \$ 91.00

1972 - 114 pages, size 14 by 8-1/2
114 pages (57 leaves) @ 65 cents per page 74.10

1889 - 324 pages, size 17 by 11
324 pages (162 leaves) @ 80 cents per page 259.20

3 closed-back canvas postbinders @ \$40 per binder 120.00

Total \$ 544.30

Restoration orders are returned by registered mail with the postage charge added to the bill, or by air freight, collect. If agreeable with you this order will be returned by Emery air freight, collect.

We appreciate your inquiry and hope you will find our price satisfactory.

Sincerely yours,

Ruth G. Barrow
(Mrs.) Ruth G. Barrow

rgb

APPENDIX M
STATE OF MONTANA

DEPARTMENT OF ADMINISTRATION

THOMAS L. JUDGE
GOVERNOR

Memorandum

TO: Jim Oppedahl
Legislative Council

FROM: Paul Veremko *P. L. V.*
Records Management Bureau

DATE: September 5, 1978

SUBJECT: Cost Estimate for Microfilming Montana State Constitution

As per our conversation of September 5, 1978, I am providing the following cost estimate for microfilming the Constitution of the State of Montana. Because of the size of the documents, 35mm roll film is the only good alternative. Although it is possible to jacket the roll film and produce fiche duplicates, this is not recommended unless you anticipate a large distribution to users who only have microfiche (not 35mm roll film) viewers. (Jacketing can be done at any time in the future.) If the film is to be used chiefly for security purposes, un-jacketed 35mm roll film and a single roll film duplicate is adequate. For maximum security, the duplicate should be stored separately from the master. We will gladly store the master for you at the Records Center, and send the duplicate (working copy) to your office. The costs involved in this project would be as follows:

Material to be Filmed

<u>Page Size</u>	<u>Volume</u>
16" x 10.5"	130 p.
17" x 11"	324 p.
14" x 8.5"	114 p.
Total	568 p.

Master Film Cost

35mm rolls:	1.5 rolls @ \$7.50/roll = \$11.25
processing:	1.5 rolls @ \$3.75/roll = 5.63
labor:	3 hours @ \$8.15/hour = <u>24.45</u>
	Total \$41.33

Duplicate Film Cost (per duplicate)

35mm diazo: 1.5 rolls @ \$7.25/roll = \$10.88

GRAND TOTAL \$52.21
(Master plus one duplicate)

RECEIVED

SEP 12 1978

MONTANA LEGISLATIVE
COUNCIL

Jim Oppedahl
Sept. 5, 1978
Page 2

If jackets and microfiche duplicates are desired, please add the following:

jackets:	50 @ 15¢ each	= \$ 7.50
labor:	2 hours @ \$8.15/hour	= 16.30
cost of one set of fiche duplicates:	50 @ 12¢ each	= <u>6.00</u>

Additional Cost \$29.80
(jacketed 35mm film and fiche duplicates)

TOTAL COST JACKETED \$82.01

Approved: Rod Sager
Rod Sager, Management Systems

APPENDIX N

MONTANA ARTS COUNCIL/THOMAS L. JUDGE, GOV.

MEMORANDUM

TO: Interim Subcommittee on Education and Interested Persons

FROM: David E. Nelson, Executive Director *DEN*

DATE: August 20, 1978

RE: Report on HJR 45

When the legislature created the State Commission on Local Government a portion of its charge was to review local government laws which affected cultural activities. In the past eleven years Montana has exhibited the fastest growth in tax supported community art centers of any state in the nation. Two factors have contributed substantially to this growth. One is Section 16-1164 of Montana's Revised Codes which allows for a 1-mill permissive levy by the counties to support museums and art centers. The other has been the technical assistance and modest funding provided by the Montana Arts Council to these community based organizations. To capitalize on these two factors it was hoped that in the revision of local government codes laws might be enacted to enhance and support the cultural growth of communities.

The Montana Arts Council was successful in obtaining a grant from the National Endowment for the Arts to assist the Commission in redrafting of local codes as they relate to the arts and cultural affairs. The product of that work can be found in the "Local Government Review Bulletin, Vol. 4, No. 1, March 1977." When the legislature did not adopt the bill containing the revision of local codes it was the desire of a number of legislators and the Montana Arts Council that there develop an on-going dialogue between the Council and suitable committees of the legislature to review and explore ways in which state government could assess the cultural needs of its citizens and design ways in which it could be more helpful in serving those needs.

At this time HJR 45 was drafted along with a request for \$38,000 to support its study. An assessment of the legislature's resources indicated there was little hope of funding and the request for funds was dropped; the Council supported HJR 45 on the assumption that support for the research would be forthcoming from National Endowment for the Arts sources. However, since the adoption of HJR 45:

(1) The Arts Council has been unsuccessful in two requests for funds and expertise to conduct diagnostic research and opinion polls

(2) Congress has passed, and the President has signed, a bill authorizing a Whitehouse Conference on the Arts & Humanities and is now appropriating funds

August 20, 1978

Page Two

to assist the various states in assessing the needs of the arts. Pending the arrival of this support, we have had to stretch out our timetable for research beyond a point where the data would be useful to this interim committee.

Two other important changes have also taken place:

(1) The introduction of a formula to determine the basic state agency grant from the National Endowment for the Arts Federal-State Partnership Program. The formula is based on (a) need, and (b) effort. The definition of "need" is described as the average income of a state, and "effort" is defined as the amount of the general fund appropriation to the State Arts Agency.

(2) The designing of a federal method to support community arts efforts with additional funds which will flow through state arts agencies.

The effect of these last two items has been a substantial increase in staff time needed to present arguments on the national level that would ease the effect (loss of funds) of formula funding on the few states which are viewed as having less than substantial state commitment in the form of general fund dollars. At the same time we have begun to assess the state's community arts organizations' structure, their present needs and their potential for future growth.

The Arts Council finds itself in the dilemma of being one which is viewed nationally as not having a significant commitment from state government. Over the past 10 years state arts agencies have been created in all 50 states and 5 territories. In all but a few states these agencies have been embraced as important elements of state government and the services they provide are viewed as being essential as other government services. The typical state arts agency is now one which is staffed to carry out various programs in support of the arts in its state as well as having funds from federal and state sources to re-grant to communities and arts organizations who are in need and are vital to the cultural health of their state. Subsequently, state programs and funds are designed to assist states with those structures and the implications are that the few state governments who have tended to view their state support for the arts as participation in a federal program and who have gauged their general fund support on minimal amounts will begin to lose access to matching federal funds in substantial ways both for state level programs and, subsequently, new community programs. The optimum point-of-view the state could adopt under these circumstances would be one in which the state arts agency is funded using the same criteria as are used for other essential state agencies and provide matching general fund dollars for programs which are statewide in nature and benefit its citizens in equitable ways.

DEN/jm

Chapter 36--MONTANA ARTS COUNCIL
(1947 RCM)

Sect. 82-3601. Montana Arts Council created--purposes. In recognition of the increasing importance of the arts in the lives of the citizens of Montana, of the need to provide opportunity for our young people to participate in the arts and to contribute to the great cultural heritage of our state and nation, and of the growing significance of the arts as an element which makes living and vacationing in Montana desirable to the people of other states, the Montana arts council is hereby created as an agency of state government.

1972 Constitution of Montana

Article IX, Sect. 4. Cultural resources. The legislature shall provide for the identification, acquisition, restoration, enhancement, preservation, and administration of scenic, historic, archeologic, scientific, cultural, and recreational areas, sites, records and objects, and for their use and enjoyment by the people.

Sect. 82-3606 (1947 RCM). Duties of the council. The duties of the council shall be: (1) To encourage throughout the state the study and presentation of the arts and to stimulate public interest and participation therein; (2) To co-operate with public and private institutions engaged within the state in artistic and cultural activities, including but not limited to, music, theatre, dance, painting, sculpture, architecture and allied arts and crafts and to make recommendations concerning appropriate methods to encourage participation in and appreciation of the arts to meet the legitimate needs and aspirations of persons in all parts of the state; (3) To foster public interest in the cultural heritage of our state and to expand the state's cultural resources; (4) To encourage and assist freedom of artistic expression essential for the well-being of the arts; (5) To report as provided in section 2 (82-4002) of this act.

PROPOSAL FOR A STATE CULTURAL POLICY

TO: The Interim Subcommittee on Education

I. RECOMMENDED STATE CULTURAL RESOURCES POLICY

The Montana Legislature adopts as state policy that the arts are essential to foster and to enhance the lives of every citizen, to preserve our cultural legacy, to advance our living heritage, and to insure a quality of life based on individual dignity.

II. RECOMMENDATIONS FOR IMPLEMENTATION

A. Adopt the recommended state cultural resources policy.

(1) There is increased concern within the general public for the value of the arts in a quality life. The success of the National Endowment for the Arts and the unilateral growth of state arts agencies stems from the public's mandate that government provide leadership and support for the arts in our culture.

State government has a role in:

- (a) insuring that Montana citizens have an opportunity to create, participate in, and appreciate the wide range of all the arts regardless of age, sex, race, income, physical disability or place of residence,
- (b) aiding communities through technical assistance and matching grant funds to meet the public demand for increased and varied arts activities; to join with them in developing exhibitions, performances, and other events stemming directly from the area's cultural roots deeply involving local citizens in all aspects; stimulating the perception and imaginations of local residents, and leaving a continuing educational tool for children and adults,
- (c) assisting in the survival of our creative resources in aiding in the broadening of their economic base. To assist financially in the maintenance or expansion of significant and high quality services to artists of Montana; to strive in all ways to create and maintain a healthy cultural climate in support of the artists.
- (d) integrating the arts and their unique contributions within the framework of society and demonstrating the role of the arts in achieving a quality life. To elicit from the arts and educational establishments and from within the state at large a new commitment to the arts as integral to education and to increase the concern for sound design in all levels of government, thus improving communications and saving money,
- (e) documenting the richness of local cultural heritage and accomplishment as a crucial factor in developing self-identity and community pride,

- (f) supporting expressiveness as an innate element of human nature and that the senses and perceptual capacities of children must be as zealously cultivated as their physical and intellectual capacities. An education that enhances the body and the mind while neglecting the senses is not developing the whole person. As athletics are to the body and books are to the mind, so the arts are the essential tool for developing the sensibility.
- (g) encouraging and supporting freedom of artistic expression as the key to the growth and well being of the arts.

B. Allocate Funds Necessary to Implement the Policy.

The State should assume its share of the responsibility of the Federal-State-Local partnership by allocating sufficient funds to assure that the federal funds enhance and not direct the growth of the cultural life of Montana.

- (1) State support should include sufficient state tax base funds to carry out the administrative functions of the Montana Arts Council assuring that federal funds are used for re-granting and in support of special programs which provide services to the arts in Montana.
- (2) State and federal funds should be used to encourage the growth of private giving for the arts and will not supplant existing support.
- (3) The State should recognize that multiple funding sources from private, corporate, state, federal and local governments provide stability for arts organizations and insure the best interests of the public will be served.
- (4) Although the arts and our cultural heritage are basic to society and support on their behalf represents a substantial investment in the future, they are often overlooked in lieu of what is viewed as critical needs in the governmental budgeting process. It is recommended that a stable source of funding be generated at the state level which has its source in a special tax such as the coal tax. It is time to think of future generations and make governmental commitments that will insure our cultural preservation as well as our environmental preservation.
- (5) There should be established a goal of \$1 state support to the arts for each Montana citizen.

C. Assess and Coordinate Activities of Agencies

It should be of value to the State of Montana to develop a structure which would bring together the various elements of State government which have responsibilities in preserving, recording, or otherwise supporting cultural activities in the State to assess the degree to which Article IV, Section IX of the Constitution is being accomplished. This could be accomplished in a number of ways:

- (1) the creation of a Department of Cultural Affairs.
- (2) provision of a separate office within the Department of Education to assist in coordinating efforts towards implementing cooperative planning among agencies who share responsibility for the preservation, stimulation and diffusion of cultural resources.
- (3) that the legislature report to the public during every other regular legislative session documenting the state's participation in programs which preserve and advance our cultural heritage.



2 INTRODUCED BY -----

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON EDUCATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO APPROPRIATE MONEY
6 FROM THE GENERAL FUND FOR PRESERVATION OF MONTANA'S ORIGINAL
7 CONSTITUTIONS."

13

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Appropriation. There is appropriated
11 \$1,475.55 from the general fund to the office of secretary
12 of state for the fiscal year ending June 30, 1980, for the
13 purpose of deacidifying and laminating the original 1884,
14 1889, and 1972 Montana Constitutions at the W. J. Barrow
15 Restoration Shop, Inc., of Richmond, Virginia.

-end-



1 JOINT RESOLUTION NO. _____

2 INTRODUCED BY _____

3 BY REQUEST OF THE INTERIM SUBCOMMITTEE ON EDUCATION

4
5 A JOINT RESOLUTION OF THE SENATE AND THE HOUSE OF
6 REPRESENTATIVES OF THE STATE OF MONTANA URGING THE HOUSE
7 APPROPRIATIONS COMMITTEE AND THE SENATE FINANCE AND CLAIMS
8 COMMITTEE TO ACT FAVORABLY UPON REQUESTS TO ALLOCATE COAL
9 TAX SEVERANCE FUNDS TO CULTURAL AND HISTORICAL PROJECTS.10
11 WHEREAS, the 45th Legislature amended 15-35-108(2)(h),
12 MCA, which allocates the coal severance tax, to include
13 cultural and aesthetic projects; and14 WHEREAS, Article IX, section 4, of the Montana
15 constitution directs the Legislature to enhance cultural and
16 historical activities and to encourage their use and
17 enjoyment by the people; and18 WHEREAS, the biennial allocation of a portion of the
19 coal severance tax would establish a solid foundation upon
20 which the Legislature could meet its constitutional
21 obligations for cultural and historical activities and
22 projects; and23 WHEREAS, Montana's cultural and historical resources
24 are among her most valuable nonrenewable resources; and

25 WHEREAS, the Congress of the United States has declared

1 that the cultural and historical foundations of the nation
2 should be preserved as a living part of our community life
3 and development in order to give a sense of orientation to
4 the American people; and

5 WHEREAS, the Congress has further declared that a high
6 civilization must not limit its efforts to science and
7 technology alone but must give full value and support to the
8 other great branches of man's scholarly and cultural
9 activity in order to achieve a better understanding of the
10 past, a better analysis of the present, and a better vision
11 of the future; and

12 WHEREAS, the cultural and historical resources of
13 Montana will be lost to the current and future citizens of
14 the state if not properly encouraged, collected, preserved,
15 and disseminated; and

16 WHEREAS, there is little organized effort to identify
17 and preserve folkways and traditional customs and
18 expressions of the spirit common to Montanans; and

19 WHEREAS, cultural and historical resources contribute
20 to Montana's commercial and industrial growth, attract
21 visitors to the state, generate taxes and other revenue, and
22 generally enhance the economy of the state.

23

24 NOW, THEREFORE, BE IT RESOLVED BY THE SENATE AND THE HOUSE
25 OF REPRESENTATIVES OF THE STATE OF MONTANA:

1 That the House Appropriations Committee and the Senate
2 Finance and Claims Committee are encouraged to act
3 favorably, pursuant to 15-35-108(2)(h), upon funding
4 requests that provide for the enhancement and encouragement
5 of cultural and historical projects in Montana.

-End-



APPENDIX Q

1

BILL NO.

2

INTRODUCED BY

3

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON EDUCATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING ORIGINAL
6 CUSTODIANS TO TRANSFER OFFICIAL RECORDS TO THE STATE
7 ARCHIVES; ESTABLISHING THE LEGAL STATUS OF CERTIFIED COPIES
8 OF PUBLIC AND OFFICIAL RECORDS; AND AMENDING SECTION
9 2-6-303, MCA."

10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 ~~NEW SECTION.~~ Section 1. Certified copies of public
13 records. (1) The Montana historical society shall reproduce
14 and certify copies of public records in its possession upon
15 application of any citizen of this state.

16 (2) The certified copy of a public record has the same
17 force in law as it made by the original custodian.

18 ~~NEW SECTION.~~ Section 2. Certified copies of official
19 records. (1) The Montana historical society shall reproduce
20 and certify copies of official records in its possession
21 upon application of any citizen of this state.

22 (2) The certified copy of an official record has the
23 same force in law as it made by the original custodian.

24 Section 3. Section 2-6-303, MCA, is amended to read:

25 "2-6-303. Ownership of records -- transfer. (1) Every

1 public officer is entitled to the possession of all books
2 and papers pertaining to his office or in the custody of a
3 former incumbent by virtue of his office.

4 (2) All official records shall remain the property of
5 the state. They shall be delivered by outgoing officials to
6 their successors and shall be preserved, stored,
7 transferred, destroyed, or disposed of and otherwise managed
8 only in accordance with the provisions of this part.

9 131. A public officer may, with the concurrence of the
10 Montana historical society, transfer to the state archives
11 official records that he has been specifically directed by
12 statute to preserve or keep in his office."

13 Section 4. Codification instructions. The code
14 commissioner shall codify section 1 in chapter 6, part 2, of
15 Title 2 and section 2 in chapter 6, part 3, of Title 2.

-End-

1

BILL NO. _____

2

INTRODUCED BY _____

3

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON EDUCATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE METHOD
6 OF STATE BUILDING SPACE ALLOCATION AND PROVIDING FOR THE
7 ALLOCATION OF SPACE TO ENTITIES OTHER THAN STATE AGENCIES;
8 AMENDING SECTION 2-17-101, MCA."

9

10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 2-17-101, MCA, is amended to read:
12 "2-17-101. Allocation of office space. (1) The
13 department of administration shall:

14 (a) periodically survey the needs of state agencies
15 located in Helena; and shall

16 (b) assign space in state office buildings to such
17 agencies; and

18 (c) periodically survey, allocate, and assign space in
19 state buildings in Helena to entities, other than state
20 agencies, authorized by the legislature on the basis of
21 demonstrated need and available space.

22 (2) No state agency shall lease, rent, or purchase
23 property for quarters in Helena without prior approval of
24 the department.

25 (3) The department shall charge entities receiving

1 space pursuant to subsection (1)(c), other than the sons and
2 daughters of Montana pioneers organization, a fee for
3 maintenance, repair, heat, and light on the same basis as
4 for state agencies. The sons and daughters of Montana
5 pioneers organization may not be charged when space is
6 provided pursuant to subsection (1)(c)."

-End-

1

BILL NO. _____

2

INTRODUCED BY

3

BY REQUEST OF THE INTERIM SUBCOMMITTEE ON EDUCATION

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT APPROPRIATING \$49,596
6 TO ESTABLISH A FIELD ACQUISITIONS PROGRAM IN THE MONTANA
7 HISTORICAL SOCIETY FOR THE BIENNIAL ENDING JUNE 30, 1981."

8

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Appropriation. (1) There is appropriated
11 \$24,364 from the general fund to the Montana historical
12 society archival program for the fiscal year ending June 30,
13 1980.

14 (2) There is appropriated \$25,232 from the general
15 fund to the Montana historical society archival program for
16 the fiscal year ending June 30, 1981.

17 (3) The money appropriated in subsections (1) and (2)
18 is to be used to fund a field acquisitions program for
19 locating and collecting historic materials that relate to
20 Montana and are worthy of preservation.

-End-



